

**DECISIONS**  
**OF THE**  
**RAILROAD COMMISSION**

**OF THE**  
**STATE OF CALIFORNIA**

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**VOLUME II**

**JANUARY 1, 1913, TO JUNE 30, 1913.**



**FRIEND WM. RICHARDSON, SUPERINTENDENT OF STATE PRINTING**  
**SACRAMENTO, CALIFORNIA**  
**1913**



## COMMISSIONERS

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DOCUMENTS  
DEPT.

JOHN M. ESHLEMAN, President

H. D. LOVELAND

ALEX. GORDON

MAX THELEN

EDWIN O. EDGERTON

CHARLES R. DETRICK

Secretary

833 Market Street

San Francisco

# CALIFORNIA RAILROAD COMMISSION DECISIONS.

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DECISION No. 395.

R. PAUTZ ET AL.

*vs.*

HERMOSA BEACH WATER COMPANY.

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Case No. 302.

*Decided January 6, 1913.*

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REPORT OF THE COMMISSION.

## ORDER OF DISMISSAL.

On written request of complainants on file with this Commission.

*It is hereby ordered that the above-entitled case be, and the same is hereby, dismissed.*

Dated at San Francisco, California, this 6th day of January, 1913.

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DECISION No. 396.

IN THE MATTER OF THE SERVICE OF THE NEVADA-CALIFORNIA-OREGON RAILWAY AT TERMO, CALIFORNIA.

On the Commission's own initiative. Case No. 305.

*Decided January 8, 1913.*

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Abandonment of station agency at the point in question on respondent's railroad not justified on grounds of inadequate revenue from operation.

The present practice of unloading freight on the ground and exposing same to the elements and roaming cattle evinces a total disregard of the consignees' interests, if not their rights.

There being no other agency station on the road reasonably available, *held*, that respondent should arrange to properly store and care for the freight delivered at said point, free of charge, for a reasonable length of time, sufficient to enable the consignees to receive notice of the arrival of the goods and take delivery of same.

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## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is a proceeding on the Commission's own motion and originated in an informal complaint filed by a number of settlers living in the vicinity of Termo, California.

It appears from the testimony that the Nevada-California-Oregon Railway, for a period of ten years, maintained an agent at Termo, California, and that on April 30, 1912, the agent was withdrawn and the station was thereafter operated as a non-agency station, and that since the withdrawal of the agent the freight for Termo is usually unloaded from the cars to the ground and permitted to lie thereon until removed by the consignee, or his agent, and that as a consequence of the exposure to the elements and roaming cattle, freight has, in some cases, been badly damaged and losses have been sustained by consignees.

It also appears that there is no other agency station on the line of the carrier reasonably available to the people living in the vicinity of Termo and that the nearest agency stations are Hot Springs, forty-five miles to the south, and Madeline, fifteen miles to the north of Termo.

The carrier contends that insufficient revenue was received on shipments forwarded from and received at Termo to justify its continuance as an agency station and that the present receipts from freight forwarded and received at Termo do not justify the re-establishment and maintenance of an agency at that point.

The contention of the carrier seems to be sustained by exhibits submitted at the hearing, setting out the amount of business transacted at Termo for the two years next preceding date of the withdrawal of the agent therefrom.

The testimony disclosed that the train crews of the carrier have instructions to unload the freight from the cars to the platform of the building, formerly used as a depot and which is located on a "house track" siding adjacent to the main line of the carrier, but that these instructions are not complied with.

This building has been rented by the carrier to Mr. C. C. Brack, who conducts a store and post office therein and who has also fitted up a portion thereof as living quarters for himself and family. A part of this building is also used for storing the freight of some of the parties who receive freight at Termo and who live at a distance and who have arranged with Brack to warehouse and care for the freight consigned to them, until such time as it is convenient for them, or their agent, to call for same. For this service the consignees have been paying Brack 10 cents per 100 pounds on the freight so handled and warehoused.

The carrier's present practice of unloading freight for Termo on the ground and exposed to the elements and roaming cattle, evinces a total

disregard of the consignees' interests, if not their rights, and should be severely condemned, especially in view of the fact that there is ample unoccupied space in the building, formerly used as a depot, to provide storage for the quantity of freight usually received at Termo, and that the unloading from the cars to the platform of the building is easier than the unloading from the cars to the ground.

From a consideration of all the facts, I am of the opinion that the service now furnished by the carrier at Termo is unreasonable, inadequate and improper and that the carrier should arrange to properly store and care for the freight delivered at that point, free of charge, for a reasonable length of time, sufficient to enable the consignees to receive notice of the arrival of the goods and take delivery of same.

It was brought out at the hearing that the occupant of the former depot at Termo was willing to perform this service for \$30.00 a month and continue paying the carrier \$10.00 monthly rental for the use of a part of the building as a store, post office and abode.

I submit herewith the following form of order:

**ORDER.**

The Commission having, on its own initiative, instituted an investigation into the service of the Nevada-California-Oregon Railway at Termo, California, and full investigation and hearing of the matters and things involved having been had and the Commission being of the opinion that the service of the Nevada-California-Oregon Railway at Termo is unreasonable, inadequate and improper,

*It is hereby ordered* that the Nevada-California-Oregon Railway arrange to properly store and care for the freight delivered at Termo, free of charge, for a reasonable length of time, sufficient to enable the consignees of the freight to receive notice of arrival of the goods and take delivery of same and take reasonable steps to notify the consignees thereof;

*And it is further ordered* that this arrangement be made effective not later than twenty days from date of service of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighth day of January, 1913.

Decisions Nos. 397, 398 and 399: grade crossing: not printed. See end of volume.

DECISION No. 400.

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GRIFFING BANCROFT AND PHILIP BANCROFT,  
*vs.*  
 JAMES A. MURRAY AND ED FLETCHER.

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Case No. 304.

*Decided January 8, 1913.*

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The essence of this application is for authorization to use the property of an existing utility for the purpose of conveying complainants' water for their own use.

*Held*, The Commission has no authority to compel a public utility to permit the use of its property by a private person for his own private uses.

*Riley & Hubbell*, for Complainants.

*A. H. Sweet*, for Defendants.

*Albert Schoonover*, for Riparian Land Owners.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This was an argument on the question of whether or not the Commission has jurisdiction to afford the relief asked for in the complaint. The Commission questioned its authority and asked the parties to present such arguments as they might have on the question.

Complainants allege in effect that they are the owners of some eight hundred acres of land in Spring Valley, San Diego County, together with a dam, reservoir and water distributing system situated thereon and that they are engaged in the business of raising on said land, olives and other farm products: that they cannot develop on the land water sufficient for their purposes: that they have appropriated some 320 inches of water at a point some 1,000 feet above the diverting dam of the Cuyamaca Water System in the San Diego River: that complainants contemplate, unless they secure the order of this Commission as prayed for, to build a diverting dam across the river at the point of appropriation and to convey the water appropriated by means of a 20-inch pipe over rugged country, some 25 miles to complainants' land: and that the Cuyamaca Water System's flume will not be in use for the purpose of carrying water during the winter season for irrigation purposes and that the flume could conveniently be used during this season for conveying the water of complainants to a point from which it could be taken from the flume and thence conveyed to complainants' reservoir.

On these allegations complainants ask for an order permitting and authorizing them to carry their water through the flume and water conduits of said Cuyamaca Water System and establishing rules and regulations and conditions relative to the use of the flume and water conduits of the Cuyamaca Water System, and also for the establishment by this Commission of the charges for the use by complainants of said flume and water conduits.

There is no claim that the owners of the Cuyamaca Water System have held themselves out to the public as common carriers of water. The essence of the application is for authorization to use the property of an existing utility for the purpose of conveying complainants' water for their own private uses. Complainants were unable to point to any specific provision of the Public Utilities Act conferring authority upon the Commission to make the order requested, but relied on the general powers conferred upon the Commission by section 31 and section 32(b) of the Public Utilities Act. Those sections confer upon the Commission general power to supervise and regulate every public utility in the State and to prescribe the rates, rules and regulations of such utilities. I am unable to construe these sections as conferring upon the Commission authority to compel a public utility to permit the use of its property by a private person for his own private uses. It is true, that under section 41 of the Public Utilities Act, the Commission may at times compel a public utility to permit another public utility to use a portion of its plant or system located on or over or under any street or highway, but that section can have no applicability to a case in which the use is desired by a private individual for his own private purposes.

If complainants were correct in their contention, the owner of a natural gas well might with equal logic demand the right to run his gas through the pipes of the local gas company and thereafter to take out the gas for his own purposes.

I can find no authority in the Public Utilities Act for the relief prayed for in the complaint, and accordingly recommend that the complaint be dismissed.

I submit herewith the following form of order:

**ORDER.**

*It is hereby ordered* that the complaint in the proceeding entitled as above be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighth day of January, 1913.

## DECISION No. 401.

## IN THE MATTER OF THE APPLICATION OF THE IMPERIAL VALLEY GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF BONDS.

## Application No. 164.

*Decided January 8, 1913.*

Applicant asks for authority to issue and sell bonds and to use the proceeds for construction and extensions and for the refunding of obligations. Estimate of earnings from the capital to be secured inquired into and the remarkable growth of the territory to be served considered.

*Held*, That there is a reasonable prospect for a material betterment in applicant's financial condition and for the payment of the interest on the bonds and their redemption at maturity if the application is granted.

*Held*, That before the bonds are issued, applicant should satisfy the Commission of the alternative route of construction which it has selected and that it may lawfully use such route, and such satisfaction should be made a condition to the order. Also before dividends can be paid \$10,000.00 shall be spent from earnings to increase capital account.

*W. F. Holt*, for Applicant.

## REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application for authority to issue bonds. The original application asked for authority to issue bonds of the face value of \$200,000.00, bearing interest at the rate of six (6%) per cent per annum, the dates of maturity of the bonds ranging from January 1, 1937, to and including January 1, 1956, the bonds to be issued in denominations of \$1,000 and \$500 each. At the hearing, the amount asked for was reduced to \$154,500.00.

Applicant was incorporated on October 27, 1908, with an authorized capital stock of \$500,000.00, all common, all of which has been issued. Applicant has heretofore issued and sold its first mortgage 6 per cent bonds of the face value of \$100,000.00 maturing serially from January 1, 1920, to and including January 1, 1939, ten bonds maturing on the first day of January of each of said years. From the sale of said bonds, supplemented by the use of a portion of said stock as bonus, applicant derived the sum of \$100,000.00, which is the amount of money which has gone into its plant. Applicant does not claim consideration for its capital stock in any rate fixing inquiry.

Applicant has constructed a gas generating plant in the town of El Centro, in Imperial County, and a distributing system in portions of the towns of El Centro and Imperial, which systems are connected by a transmission main. On November 1, 1912, applicant was serving 285

customers in El Centro and 140 in Imperial at an average revenue per customer per month of about \$4.00. For the year ending December 31, 1911, the total gross revenue was \$12,291.29 and the gross expenses, including \$6,000.00 interest on bonds but not including depreciation, \$17,382.58, leaving a deficit, not counting depreciation, of \$5,091.29 for the year.

Applicant desires now to construct a main from Imperial to Brawley, and a distributing system in Brawley; a main from El Centro to Calexico and a distributing system in Calexico and Heber; a main from El Centro to Holtville and a distributing system in Holtville; extensions to its distributing systems in El Centro and Imperial; and an extension to its plant in El Centro. Applicant's estimate for this work, to run from October 1, 1912, to May 1, 1914, is as follows:

|   |             |              |
|---|-------------|--------------|
| Main from Imperial to Brawley, 43,460 feet at 26c-----        | \$11,299 60 |              |
| Ten ditch crossings at \$21.50-----                           | 215 00      |              |
|   |             | \$11,514 60  |
| Main from El Centro to Calexico, 55,760 feet at 26c-----      | \$14,497 60 |              |
| Twelve ditch crossings at \$21.50-----                        | 255 00      |              |
|   |             | 14,752 60    |
| Main from El Centro to Holtville, 54,420 feet at 26c-----     | \$14,149 20 |              |
| Ten ditch crossings at \$21.50-----                           | 215 00      |              |
|   |             | 14,364 20    |
| Extensions El Centro 75 per cent of \$18,158.95-----          |             | 13,619 19    |
| Extensions Imperial 75 per cent of \$7,092.50-----            |             | 5,319 37     |
| Distributing system Brawley, 75 per cent of \$12,943.25-----  |             | 9,707 43     |
| Distributing system Calexico, 75 per cent of \$10,947.72----- |             | 8,210 79     |
| Distributing system Heber, 75 per cent of \$4,426.75-----     |             | 3,320 07     |
| Distributing system Holtville, 75 per cent of \$9,297.90----- |             | 6,973 43     |
| 300 services in El Centro at \$10.41-----                     |             | 3,123 00     |
| 150 services in Imperial at \$10.41-----                      |             | 1,561 50     |
| 200 services in Brawley at \$10.41-----                       |             | 2,082 00     |
| 150 services in Calexico at \$10.41-----                      |             | 1,561 50     |
| 30 services in Heber at \$10.41-----                          |             | 312 30       |
| 150 services in Holtville at \$10.41-----                     |             | 1,561 50     |
| 550 regulators, El Centro at \$3.88 installed-----            |             | 2,134 00     |
| 300 regulators, Imperial at \$3.88 installed-----             |             | 1,164 00     |
| 200 regulators, Brawley at \$3.88 installed-----              |             | 776 00       |
| 150 regulators, Calexico at \$3.88 installed-----             |             | 582 00       |
| 30 regulators, Heber at \$3.88 installed-----                 |             | 116 40       |
| 150 regulators, Holtville at \$3.88 installed-----            |             | 582 00       |
| 100 3-light prepay meters at \$12.03 installed-----           |             | 1,203 00     |
| 80 5-light meters at \$8.55 installed-----                    |             | 684 00       |
| 800 3-light meters at \$7.44 installed-----                   |             | 5,952 00     |
| 1 purifier, including foundation-----                         |             | 1,380 00     |
| Changes and additions to purifier and holder connections----- |             | 350 00       |
| Gas compressor tank erected-----                              |             | 600 00       |
| Motor and gas compressor-----                                 |             | 1,300 00     |
| Additional seal and scrubber erected-----                     |             | 850 00       |
| Water cooling tower-----                                      |             | 500 00       |
| Concrete lamp black separator and water storage-----          |             | 1,100 00     |
| Circulating pump and motor-----                               |             | 375 00       |
|   |             | <hr/>        |
|   |             | \$117,631 88 |



Applicant desires also to refund a note in the amount of \$5,000.00, dated January 19, 1910, running to First National Bank of El Centro, and to meet certain vouchers payable, amounting to \$1,066.60, as specified in letter from the company to this Commission, dated November 26, 1912, and on file in this proceeding. The moneys derived from the note were paid to Holton Power Company to reimburse said company for moneys expended by it for applicant on labor and machine trenching in the construction of pipe lines from El Centro to Imperial and in the town of Imperial. The vouchers payable represent materials purchased and used for permanent improvements.

The total amount of money which applicant desires to secure is thus \$123,698.48. To secure this money, applicant desires to sell said bonds of the face value of \$154,500.00 at a sum so as to net 80 per cent of par after the payment of discount and expenses. Mr. Holt testified that he had made no contract with any bonding house for the disposition of the bonds and that it would be necessary to sell them without the help of a bond house. I am of the opinion that the bonds are worth more than 80, but recommend an authorization to sell at a minimum net price of 80, with the understanding that applicant will use its best endeavors to secure a higher price.

I made careful inquiry into the probability of applicant's being able to make a net profit sufficiently large to enable it to pay interest on the new bonds now asked for and eventually to retire them. As already stated, applicant's business, with a present list of customers of 425, has hitherto been conducted at a loss which for the calendar year 1911 amounted to \$5,091.29. Applicant expects, however, with the increased revenue and comparatively small additional operating expenses to accrue from its increased business, to convert this deficit into a handsome profit. Applicant estimates that as the result of its improvements and extensions it will have at the end of fifteen months from date an increased number of customers as follows:

|           |           |
|-----------|-----------|
| El Centro | 250       |
| Imperial  | 150       |
| Brawley   | 200       |
| Calexico  | 150       |
| Heber     | 30        |
| Holtville | 150       |
|           | <hr/> 930 |

These estimates are based largely on the number of water services now in these towns and the proportion which the gas services now installed by applicant in El Centro and Imperial bear to the water services in the same territory. One hundred and fifty-nine contracts have already been signed in Brawley. These services, if the present revenue per service is maintained, would yield an additional revenue of

\$44,645.00 per annum. While expressing no opinion as to the correctness of these figures, I desire to draw attention to the remarkable growth of the territory which it is proposed to serve and to the unusually good field for gas in this territory. The growth in the number of consumers of water in the towns affected, as between 1911 and 1912, was as follows, in percentages: Brawley 22.4 per cent; Calexico 22.2 per cent; El Centro 41.2 per cent; Holtville 39.1 per cent; Imperial 14.7 per cent. During the same period, the increase in percentages in the number of consumers of electricity was as follows: Brawley 49.5 per cent; Calexico 55.6 per cent; El Centro 41.2 per cent; Holtville 38.1 per cent; Imperial 30.7 per cent. By reason of the heat during the summer time and the lack of fuel, gas heating is almost a necessity for this territory, with the result that the percentage of consumers to the population is unusually large. No other company furnishes gas in Imperial County. I am satisfied that there is a reasonable prospect for a material betterment in applicant's financial condition and for the payment of the interest on the bonds and their redemption at maturity if the application is granted.

If the bonds net only 80 cents on the dollar, an additional face value of \$154,500 of bonds will be outstanding as against an increased property of only \$123,600, leaving a margin of some \$30,900 of bonds over property out of this transaction. I find, however, that the value of the existing property is considerably in excess of the present outstanding indebtedness. The applicant owns real estate and rights of way which were presented to it by affiliated corporations, which have a value of perhaps \$20,000.00. Applicant is also entitled to certain additional credits, including salaries which were not charged during the construction period. As against these credits should be charged depreciation. After considering all the facts of the case, I am of the opinion that the Commission may safely authorize the reduced amount of bonds now applied for, provided that the existing property be increased by the sum of \$10,000 in addition to the proceeds of the bonds. Applicant has agreed to defer the payment of dividends until this amount of money has been added to capital account from net profits and I recommend that this arrangement be made. Provision should also be made year by year during the life of the bonds, for amortizing the bond discount and the expenses, if any, of their sale.

At the time the towns affected by this application were platted and the plats accepted by the board of supervisors, the plats had attached thereto as a condition the reservation of the right to lay, maintain and operate gas pipes in the streets. These rights, such as they are, are now vested in applicant. Applicant has applied to the board of supervisors of Imperial County for a franchise permitting it to lay its mains and pipes under the public roads and highways of the county. The fran-

chise was passed, but a petition calling for a referendum vote has been presented to the board of supervisors. Applicant claims that it has a private right of way to the new towns in which it is now proposed to establish distributing systems and that if the franchise is not ultimately secured it can lay its mains along this private right of way, securing permission from the board of supervisors to cross the particular highways affected. Before the bonds are issued, applicant should satisfy the Commission of the alternative route which it has selected and that it may lawfully use such route and such satisfaction should be made a condition to the order.

I find that the moneys which are to be secured from the sale of the bonds applied for are not properly chargeable to operating expenses or to income and submit herewith the following form of order.

#### ORDER.

Imperial Valley Gas Company having applied to the Railroad Commission of the State of California for the consent of the Commission to the issuance by said company of bonds to the amount of \$200,000, face value, which amount was reduced at the hearing to \$154,500, face value, said bonds to be payable serially on the first day of January, 1937, and on each first day of January, thereafter up to and including the first day of January, 1956, and to bear interest at six per cent per annum, payable semiannually, and secured by a mortgage or deed of trust upon all the property of the company, and a public hearing having been held upon said application and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion and extension of facilities and the discharge or lawful refunding of obligations as will hereinafter appear in greater detail, and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California hereby authorizes the issue by said Imperial Valley Gas Company of \$154,500, face value, of principal of said bonds, maturing serially on the first day of January, 1937, and on the first day of January of each year thereafter up to and including the first day of January, 1956, to bear interest at the rate of six per cent per annum, payable semiannually, under and in pursuance of the terms of a deed of trust or mortgage to be executed by said Imperial Valley Gas Company to the Southern Trust Company, a corporation, substantially in the form attached as "Exhibit D" to the application, which mortgage or deed of trust applicant is hereby authorized to execute, all upon the following conditions and not otherwise:

- (1) Imperial Valley Gas Company shall sell the bonds hereby author-

ized to net said company not less than 80 per cent of the par value of the principal thereof, besides accrued interest thereon.

(2) The proceeds from the sale of said bonds shall be applied solely to the following purposes:

(a) For the purpose of acquiring property and of constructing, completing, extending and improving applicant's facilities for the items hereinbefore in the opinion specified, an amount not to exceed the sum of \$117,631.88.

(b) For the purpose of refunding note dated January 19, 1910, running to the First National Bank of El Centro, not to exceed the amount of \$5,000.

(c) For the purpose of meeting certain vouchers payable as specified in letter from applicant to this Commission, dated November 26, 1912, not to exceed the amount of \$1,066.60.

(3) Applicant shall not pay any dividends on its stock until the amount of \$10,000 shall have been set aside from profits and invested in items properly capitalizable.

(4) Before the bonds hereby authorized may issue, applicant shall first have filed with this Commission evidence satisfactory to the Commission to the effect that it has the lawful authority to lay its mains to carry on the extensions specified in the application.

(5) All discounts, commissions and expenses in connection with the approval, issuance and sale of said bonds authorized to be issued under this order not to exceed the amount of \$30,900, shall be amortized out of the income of the applicant before the first day of January, 1956, by the payment of annual installments, under a plan to be submitted by applicant to the Commission and approved by the Commission.

(6) Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable, is made a part of this order.

(7) The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighth day of January, 1913.

## DECISION No. 402.

IN THE MATTER OF THE APPLICATION OF REDLANDS,  
LUGONIA AND CRAFTON DOMESTIC WATER COMPANY  
TO SELL TO THE CITY OF REDLANDS AND OF SAID  
CITY TO PURCHASE A PORTION OF SAID COMPANY'S  
PROPERTY.

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Application No. 316.

*Decided January 8, 1913.*

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It appearing that the city is satisfied with the purchase price, *held*, that it is not necessary in this case to make an independent detailed investigation into the value of the property.

In accordance with the usual practice in these cases, the city has filed a duly authorized stipulation providing in effect that the city takes the plant subject to all legal claims for water outstanding against it, and stipulating that the city will not raise the point that the transfer of the property to it has served to deprive any of the members of the public of their rights to water from the water company's plant.

*F. A. Leonard*, city attorney, and *C. H. Clock*, president board of trustees, for City of Redlands.

*S. Williams* and *E. M. Lyon*, for Redlands, Lugonia and Crafton Domestic Water Company.

## REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is a joint application of Redlands, Lugonia and Crafton Domestic Water Company, hereinafter called the Water Company, to sell and of the city of Redlands to buy the water company's pumping plants, reservoirs, distributing system and certain real property connected therewith, situate within the city of Redlands, as said property is more particularly described in Schedule B annexed to the application. The water company is to retain its shares of stock in the Bear Valley Mutual Water Company, entitling it to a flow of some 247 inches of gravity water, and certain real estate.

The entire water supply of the city of Redlands has hitherto been furnished by the water company and a smaller company known as the North Side Water Company, which latter company owns a small system costing about \$8,000 and supplying some two hundred and fifty people with water. The city is now negotiating for the purchase of the North Side Water Company's property.

On May 28, 1912, the city of Redlands voted bonds in the amount of \$600,000 for the purpose of acquiring and constructing a complete

water system for the city and its inhabitants. Negotiations were thereupon entered into with the water company looking to the purchase of its plant and distributing system, finally culminating in the agreed price of \$225,000, as specified in the application. All parties to the transaction are satisfied with this price and I am convinced from the testimony that it is not necessary in this case to make an independent detailed investigation into the value of the property.

The city urges as reasons for the purchase that extensions are necessary to develop unserved sections of the city and that the water company is unwilling to make the extensions; that it is necessary to install an adequate fire protection system; and that it would be ruinous to compete with the existing company and far more desirable to buy it out at a reasonable price. The water company urges the same reasons and further its inability to compete with a municipally owned plant. The city expects to sink additional wells on the land now to be acquired, to extend the length of pipe in the distributing system from thirty-five miles to an ultimate total of seventy miles and to install an adequate fire protection system.

The water company serves some thirty families outside of the city limits. In accordance with the usual practice in these cases, the city has filed a duly authorized stipulation providing in effect that the city takes the plant subject to all legal claims for water outstanding against it and stipulating that the city will not raise the point that the transfer of the property to it has served to deprive any of the members of the public of their rights to water from the water company's plant. For more detailed information the stipulation should be read in full.

The city has sold its bonds and will be ready to pay the price agreed upon with the water company shortly after this Commission's authority has been secured.

I am of the opinion that the public convenience will be subserved by the sale as contemplated and recommend that the application be granted.

I submit herewith the following form of order:

**ORDER.**

Redlands, Lugonia and Crafton Domestic Water Company and the city of Redlands having filed with this Commission their joint application to sell and to buy that portion of the water company's property, consisting of pumping plants, reservoirs, distributing system and real estate located within the city of Redlands, as specified in Schedule B annexed to the application, and a public hearing having been held on said application, and the city of Redlands having filed with this Commission its duly authorized stipulation in writing agreeing that all legal claims for water which may be enforced against the water company may be enforced against the city and that the city will not in any pro-

ceeding urge the point that the mere transfer of the property has served to change its legal status with reference to its public duties and charges, and the Railroad Commission finding that public convenience and necessity would be subserved by the sale and purchase of said property for the terms and on the conditions specified in the application,

*It is hereby ordered* that said application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighth day of January, 1913.

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DECISION No. 403.

IN THE MATTER OF THE APPLICATION OF VENTURA CHAMBER OF COMMERCE FOR AN ORDER REQUIRING SOUTHERN PACIFIC COMPANY'S SOUTHBOUND PASSENGER TRAIN KNOWN AS THE "SHORE LINE LIMITED" TO STOP FOR PASSENGERS AT THE CITY OF VENTURA, VENTURA COUNTY, CALIFORNIA.

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Case No. 329.

*Decided January 8, 1913.*

It appearing that since the date of the hearing herein respondent has placed in operation its southbound passenger train No. 22, which stops at the city of Ventura and gives the citizens thereof a passenger train service substantially in accord with that prayed for in the complaint, *held*, that the complaint be dismissed.

*George Farrand and D. G. Bowker, for City of Ventura.*  
*C. W. Durbrow, for Southern Pacific Company.*

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On November 2, 1912, the Ventura Chamber of Commerce, an unincorporated organization, filed with the Commission a complaint stating that the passenger train service provided by Southern Pacific Company for the city of Ventura was inadequate to meet the demands of said city and prayed for an order of the Commission directing that Southern Pacific Company stop its southbound train No. 20, known as the "Shore Line Limited" at said city to take on and discharge passengers. The

complainant further stated that there was no southbound passenger train leaving Ventura upon which passengers were permitted to travel between the hours of 3.20 p. m. and 5.35 a. m.; also maintained that the passenger service provided by said company did not admit of passengers making a daylight trip from San Francisco south along the coast line to Ventura.

Complainant contended that it was entirely practicable for the company to stop said train No. 20 for passengers at Ventura, and such action would be convenient for and greatly accommodate the traveling public, and particularly the citizens of the city and county of Ventura, and furthermore that these citizens were reasonably entitled to such accommodation.

After due notice a hearing was held at Ventura on December 10, 1912, at which all interested parties were represented and testimony was taken concerning the matters complained of. Subsequent to the hearing, however, to wit, on December 22, 1912, Southern Pacific Company placed in effect a new time table, whereby former passenger trains Nos. 21 and 22 were restored, which had the effect of giving the city of Ventura substantially the southbound train service prayed for. Train No. 22 leaves San Francisco at 7 a. m., one (1) hour in advance of train No. 20, and reaches Los Angeles at 10.30 p. m., or forty (40) minutes after the arrival there of train No. 20. Said train No. 22 stops at all principal stations between San Francisco and Los Angeles, including Ventura. Its schedule time for arriving at Ventura is at 7.46 p. m. or twenty-four (24) minutes in advance of the passing through of train No. 20. By using train No. 22, passengers destined to Ventura from points north and from Ventura to points south will receive practically the same service as if train No. 20 were required to stop. Consequently the establishment of train No. 22 since the date of the hearing has had the effect of substantially relieving the matters complained of.

I, therefore, recommend the following order:

#### ORDER.

Chamber of Commerce, city of Ventura, Ventura County, California, having on November 2, 1912, filed with the Commission a complaint relative to the southbound passenger train service now provided said city by Southern Pacific Company and a hearing having been held in said city on December 10, 1912, at which all interested parties were represented and evidence having been taken concerning said complaint; and it appearing that since the date of said hearing Southern Pacific Company has placed in operation its southbound passenger train No. 22 which stops at the city of Ventura and gives the citizens thereof a passenger train service substantially in accord with that prayed for in its complaint,



*It is hereby ordered* that said complaint be and the same is hereby dismissed, provided, however, that Southern Pacific Company shall hereafter maintain the passenger train service now furnished by train No. 22 to the city of Ventura, except as may be otherwise ordered or approved by the Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this the eighth day of January, 1913.

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DECISION No. 404.

IN THE MATTER OF THE APPLICATION OF ANTELOPE CREEK AND RED BLUFF WATER COMPANY FOR ORDER AUTHORIZING ISSUE OF NOTES.

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Application No. 303.

*Decided January 8, 1913.*

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Applicant desires to issue its promissory notes to the amount of \$15,000.00, to use \$3,000.00 of the proceeds to refund outstanding notes and to use the remainder to reimburse its treasury for moneys expended from income during the past five years for extensions and improvements.

The physical valuation of applicant's plant not questioned as it is far in excess of the indebtedness which it is intended to secure. Such valuation and depreciation of the same taken into account in granting the application.

*Elliott McAllister*, for Applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application by the Antelope Creek and Red Bluff Water Company for an order of this Commission authorizing applicant to issue its promissory notes to the aggregate amount of fifteen thousand (\$15,000) dollars.

Applicant was incorporated in April, 1888, and since that time has been engaged in supplying water in the city of Red Bluff.

At the hearing upon this application, applicant filed an inventory of its property, which inventory amounted to one hundred and thirty-four thousand two hundred and ninety (\$134,290) dollars. This amount, however, includes an item of twenty thousand seven hundred and forty-four (\$20,744) dollars for water rights and an item of seven thousand five hundred (\$7,500) dollars representing the going value of the com-

pany. Subtracting these items from the total amount of the inventory it leaves the actual physical valuation of the property, according to this inventory, at one hundred and two thousand and forty-six (\$102,046) dollars. The Commission has not investigated the plant of applicant, but I find no need to question this physical valuation, as it is far in excess of the indebtedness which it is intended to secure.

At the present time, applicant has an outstanding bonded indebtedness of eight thousand (\$8,000) dollars, which, together with a promissory note of three thousand (\$3,000) dollars, payable to the Bank of Tehama County, makes the total present indebtedness of the company eleven thousand (\$11,000) dollars.

During the past five years, applicant has made certain extensions and improvements in its system as follows:

|                           |             |
|---------------------------|-------------|
| Meters .....              | \$ 1,691 13 |
| Distributing system ..... | 2,512 15    |
| Pumping:                  |             |
| Electric pump .....       | \$6,396 00  |
| Pit .....                 | 454 00      |
| 2 wells and suction ..... | 3,598 00    |
| Pump house .....          | 447 00      |
|                           | <hr/>       |
|                           | 10,845 00   |
|                           | <hr/>       |
|                           | \$15,048 30 |

Twelve thousand and forty-eight and 30/100 (\$12,048.30) dollars of this amount was paid by applicant out of its income. The remaining three thousand (\$3,000) dollars was borrowed from the Bank of Tehama County, applicant giving to the Bank of Tehama County its promissory note for this amount.

Applicant now desires to issue its promissory notes to the aggregate amount of fifteen thousand (\$15,000) dollars, under section 52 of the Public Utilities Act. Applicant desires to use three thousand (\$3,000) dollars of the money so obtained to pay off the above-mentioned promissory note which applicant has given to the Bank of Tehama County. The remainder of the proceeds of the notes which applicant desires to issue, are to be used to reimburse the treasury of applicant for moneys actually expended from income during the past five years for the extensions and improvements above mentioned. In coming to my conclusions upon this application, I have taken into account both the valuation of applicant's plant and depreciation of the same.

I find that the moneys to be derived from the notes which applicant desires to issue are not reasonably chargeable to operating expenses or to income, and that the moneys are reasonably necessary to carry out the purposes of applicant. I recommend, therefore, that the application be granted, subject to the express conditions precedent hereinafter in the order specified.

I submit herewith the following form of order:

**ORDER.**

Antelope Creek and Red Bluff Water Company having applied to this Commission for an order permitting applicant to issue notes to the aggregate amount of fifteen thousand (\$15,000) dollars, and a public hearing having been duly held thereon,

*It is hereby ordered* that applicant be and it hereby is authorized to issue its promissory notes to the aggregate amount of fifteen thousand (\$15,000) dollars upon the following conditions and not otherwise, to wit:

1. Applicant shall issue the notes herein authorized so as to net applicant the face value thereof.

2. Applicant shall issue the notes herein authorized at a rate of interest not to exceed 6 per cent per annum and for a term not exceeding five years.

3. With the proceeds derived from the notes herein authorized, applicant shall liquidate its promissory note for three thousand (\$3,000) dollars, payable to the Bank of Tehama County, and applicant shall use the remainder of the proceeds derived from the notes herein authorized, to reimburse the treasury of applicant for moneys actually expended from income for extensions and improvements to applicant's plant, as set forth in the application in this proceeding.

4. Applicant herein shall keep separate and accurate accounts showing the receipt and disbursement in detail of the proceeds from the sale of the notes herein authorized to be issued and shall on or about the twenty-fifth day of each month make verified reports to this Commission, stating in detail such receipt and disposition of the proceeds of the notes herein authorized, all in accordance with the provisions of this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

5. The authority herein granted to issue notes shall not extend beyond June 1, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this eighth day of January, 1913.

## DECISION No. 405.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN  
PACIFIC COMPANY TO INCREASE PASSENGER FARE  
BETWEEN SAN FRANCISCO AND BROADWAY WHARF  
IN OAKLAND.

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Application No. 252.*Decided January, 10, 1913.*

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Applicant desires to increase passenger fares from five to ten cents on that portion of its ferry system plying between San Francisco and Oakland, commonly known as the Creek Route. The five-cent fare has been in effect about twenty years. The service over the Creek Route recently has been largely increased with the object of relieving the passenger carrying boats of the Oakland Pier Route from carrying teams and automobiles, which inconvenienced and were a menace to foot passengers traveling via that route. Applicant contended that because of this improved service large numbers of passengers who ordinarily patronize the Oakland Pier Route, with the fare of ten cents, now patronize the Creek Route, at a fare of five cents.

*Held.* That the service via the Oakland Pier Route, in connection with suburban trains, is more valuable to the traveling public than the service rendered via the Creek Route, which covers only a steamer trip from landing to landing; that the Creek Route service is but an auxiliary to or a part of the regular transbay service of applicant.

*Held.* There is no good reason for penalizing the foot passengers who patronize the Creek Route boats by compelling them to pay an additional fare of five cents simply to better accommodate automobile travel for which an additional boat has been placed in service; that there is nothing to show that the entire transbay service of respondent is not profitable or that the diversion of the automobile traffic from the Oakland Pier Route has rendered the service of that route unprofitable and that with the increase in traffic via the Creek Route, since the automobiles and teams were diverted to that line, it has been more nearly profitable than ever before. Application denied.

*C. W. Durbrow*, for Applicant.

*E. D. White*, of Snook & Church, for Oakland Chamber of Commerce.

## REPORT OF THE COMMISSION.

*GORDON, Commissioner.*

This is an application of the Southern Pacific Company to increase passenger fares from five to ten cents on that portion of its ferry system plying between San Francisco and the foot of Broadway, Oakland, commonly known as the Creek Route. Under the law, the carriers are required to justify proposed advance in rates before the Commission shall approve such increase.

The applicant, in justification of the proposed increase, advanced the following reasons:

*First*—That it has spent an enormous sum electrifying and equipping the Oakland Pier Route to make it a passenger route.

*Second*—For public safety, it has forced practically all teams and automobiles to the Creek Route.

*Third*—That because of the restrictions on the Oakland Pier Route relative to the handling of teams and automobiles, this traffic being forced to the Harbor, or Creek Route, the hourly service on the Harbor Route was inadequate and in order to avoid delays, a half hourly service was instituted.

*Fourth*—That because of the improved service via the Creek Route by changing from hourly to half hourly service large numbers of passengers who ordinarily patronize the Oakland Pier Route with a fare of ten cents, now patronize the Creek Route at a fare of 5 cents.

*Fifth*—That it was reasonable that passengers traveling by team or automobile on the Creek Route should pay the same fare for the service as they did on the Oakland Pier Route, namely, 10 cents per passenger.

*Sixth*—That the improved service from hourly to half hourly boats necessitates a large increase in operating expenses of the Creek Route steamers and the foot passengers who use the Oakland Pier Route should not be encouraged by the improved Creek Route service to patronize that route at a lower rate, when the forcing of automobiles and teams to the Creek Route was arranged primarily for their safety.

I believe the testimony proves conclusively that the principal object of the increased service via the Creek Route was to relieve the passenger carrying boats of the Oakland Pier Route from carrying teams and automobiles which inconvenienced passengers traveling on the Oakland Pier Route and which the applicant states was a menace to the passengers traveling via that route. It also appears that considerable pressure was brought to bear on the Southern Pacific Company by automobilists to obtain a more frequent service between San Francisco and Oakland. The regulations of the Southern Pacific Company permitted but four automobiles on each of the Oakland Pier steamers and as a result there was a great deal of delay in automobiles securing transportation across the bay.

Mr. Marsh, president and attorney of the Motor Car Dealers' Association of San Francisco, testified (pages 74 and 75 of the Transcript) with reference to the experience of an automobilist as follows:

“He had to wait three hours on this side of the bay to go across on the Pier Route system, and coming back he had to wait four hours before he could get transported, got to the boat about six o'clock and had to wait until about ten or eleven o'clock at night. It was those conditions that induced the Motor Car Dealers' Association to go before the Southern Pacific Company and ask for better service—and the Motor Car Dealers' Association is one of the large transporters of freight—and we stated that there

should be some reciprocity in this proposition and we ought to get better ferry facilities from San Francisco to Oakland and *vice versa*; and we stated that we didn't mind the charge on automobiles or as a charge per passenger, that it was the proposition we wanted to get transported, we wanted the service. And finally we were promised by them—Mr. McCormick, I think, was the new vessel and they would then transport automobiles every half first one that promised me they would build—they were building a hour, as many as offered themselves, over the Creek Route system."

In connection with the desire of the applicant to eliminate danger of accidents to passengers on the Oakland Pier Route by forcing the automobile travel to the Creek Route, Mr. Fee says (page 35, lines 15 to 17, Transcript) :

"We want to eliminate from these boats the extra hazard assumed by the transportation of automobiles and therefore take every possible step to prevent accident to our passengers."

Mr. Fee also says, page 38 of Transcript, lines 18 to 20, inclusive :

"It has added to the effectiveness and safety of course of the Oakland Pier Route service."

Again the same witness on page 39 of Transcript, lines 15 to 17, inclusive, says :

"As to the quality of service, both are first class. In the one instance of the Oakland Pier Route it gives an added safety to passengers."

Mr. Scott testified for the applicant, page 17 of the Transcript, lines 13 to 16, inclusive :

"The element of danger in connection with the handling of a large number of people on these boats is paramount. It is a danger that is present all the time."

The question of the superior accommodations for passengers traveling via the Oakland Pier Route as against those using the Creek Route and the additional service performed by the applicant for passengers traveling via the Oakland Pier Route as against the Creek Route can best be considered by a review of the testimony given in this connection.

Page 9 of Transcript, lines 22 to 29, inclusive, the following question and answer appear :

"Q. Mr. Scott, will you state whether there is any danger to passengers boarding and leaving the boats on the Harbor Ferry as compared with that danger which is attendant upon the Pier Route boats?"

"A. Yes. We have no suitable accommodations at our Oakland side or San Francisco slip of the Creek Route for properly caring for passengers going off the upper deck, going on or off the upper deck; they have to come off the lower deck and inter-

mingle with the teams, automobiles, and as the result of that are liable to injury; and it is also a detriment in the movement of traffic."

Page 11, lines 6 to 8, inclusive, of Transcript says:

"The 5 cent fare then absolutely stops at the landing at the foot of Broadway street?"

"Yes, sir."

On page 11, lines 16 to 19, inclusive:

"Mr. Scott, on the Oakland Mole Route you carry passengers for 10 cents at quite a distance beyond the Oakland Mole?"

"Yes, sir."

In response to a question as to which station served the greatest number of passengers using the Oakland Pier Route, Mr. Scott testified (page 14 of Transcript) that the greatest number of passengers boarded or left the cars on the Oakland line at Seventh and Broadway and on the Berkeley line at Dwight Way. In other words, the applicant furnishes a service for ten cents from San Francisco via Oakland Pier to various points reached by its suburban electric system at distances varying from seven to eleven miles, and it now proposes to increase the fare from San Francisco to Oakland via the Creek Route to ten cents, in connection with which service the passenger has no opportunity to ride on suburban electric trains to his home, as he would via the Oakland Pier Route.

It appears to me that it is beyond question that the service via the Oakland Pier Route in connection with suburban trains is more valuable to the traveling public than the service rendered via the Creek Route, which covers only a steamer trip from landing to landing.

Mr. Marsh testified, page 83, Transcript, that in his judgment the average number of passengers per automobile was three. The applicant's exhibit was computed on basis of 2.55 passengers per automobile, but Mr. Durbrow stated, page 93, line 12, that this was a mere approximation and that Mr. Marsh said it would run something like from three to five.

The Commission has called for certain statistics concerning the travel via the Creek Route for the month of August, 1911 and 1912, which are as follows:

|                    | Number of<br>passengers<br>carried,<br>Creek Route<br>steamers. | Number of<br>automobiles<br>carried,<br>Creek Route<br>steamers. | Number of<br>automobiles<br>carried,<br>Oakland Pier<br>Route. | Number<br>of teams<br>carried,<br>Oakland Pier<br>Route. | Number<br>of teams<br>carried,<br>Creek Route. |
|--------------------|---|--|--|--|--|
| August, 1911 ----- | 62,478  | 2,888  | 6,721  | 477  | 11,436   |
| August, 1912 ----- | 106,064   | 13,944   | 766  | 5  | 11,773   |

|                   | Number of miles run by Creek Route steamers. | Number of trips from San Francisco daily, Creek Route, Schedule.               | Number of trips from Oakland daily, Creek Route, Schedule.                     | Number of steamers in service, Creek Route. |
|-------------------|--|--|--|---|
| August, 1911----- | 6,197.6                                      | 14 daily, except Sunday.   | 14 daily, except Sunday.   | 2   |
| August, 1912----- | 12,604.75                                    | 16 Sunday.<br>31 daily, except Sunday and holidays.<br>35 Sunday and holidays. | 16 Sunday.<br>30 daily, except Sunday and holidays.<br>34 Sunday and holidays. | 3   |

During August, 1911, the service performed was:

|                               |     |                                   |                   |
|-------------------------------|-----|-----------------------------------|-------------------|
| Steamer Garden City, 31 days_ | 245 | round trips at 12.7 miles, total_ | Miles.<br>3,111.5 |
| Steamer Melrose, 31 days----- | 243 | round trips at 12.7 miles, total_ | 3,086.1           |
| Totals-----                   | 488 | round trips                       | 6,197.6           |

During August, 1912, the service performed was:

|                               |      |                                   |                   |
|-------------------------------|------|-----------------------------------|-------------------|
| Steamer Garden City, 30 days_ | 325  | round trips at 12.7 miles, total_ | Miles.<br>4,127.5 |
| Steamer Melrose, 31 days----- | 335  | round trips at 12.7 miles, total_ | 4,254.5           |
| Steamer Thoroughfare, 31 days | 332½ | round trips at 12.7 miles, total_ | 4,222.75          |
| Totals-----                   | 992½ | round trips                       | 12,604.75         |

At an average of three passengers per automobile and 1.3 passengers per team, the travel appears as follows for August, 1911:

|                                     |        |
|-------------------------------------|--------|
| Total passengers carried-----       | 62,478 |
| Autos 2,888 at 3 passengers-----    | 8,664  |
| Teams 11,436 at 1.3 passengers----- | 14,866 |

Total passengers in vehicles----- 23,530

Foot passengers, including those with motorcycles----- 38,948

August, 1912:

Total passengers carried----- 106,064

Autos 13,944 at 3 passengers----- 41,832

Teams 11,773 at 1.3 passengers----- 15,305

Total passengers in vehicles----- 57,137

Foot passengers (including those with motorcycles)----- 48,927

#### Result.

Increase in foot passengers, including motorcycles----- 9,979

Increase in auto passengers----- 32,968

Increase in team passengers----- 439

Increase in autos----- 11,056

Increase in teams----- 336

Witnesses for the applicant testified that the fare of 5 cents had been in effect for many years between San Francisco and Oakland via the so-called Creek Route, but could not state the exact time because it antedated their service with the Southern Pacific Company. It is a matter of common knowledge that the 5 cent fare was estab-



lished some twenty years ago at the time the Davie Ferry Company operated the steamer "Rosalie" between San Francisco and Oakland.

After the "Rosalie" was taken out of service, the Southern Pacific Company still maintained the fare at 5 cents and has continued to this date.

Applicant's Exhibit No. 1 purports to show that because of the increasing of the service from once an hour to half hourly, necessitating the running of three boats instead of two, has resulted in a loss to the Southern Pacific Company of \$1,295.12 in the three months of May, June and July, 1912, as compared to the same months of 1911. Included in this, however, is \$625.43 additional loss from the running of restaurants on steamers. The figures representing a loss in this exhibit are based on the fact that the diversion of automobile and team traffic from the Oakland Pier Route to the Creek Route has deprived the applicant of a fare of 10 cents and substituted a fare of 5 cents from those passengers formerly patronizing the Oakland Pier Route.

I cannot consider the Creek Route service as anything but an auxiliary to or a part of the regular transbay service of the applicant.

I believe the evidence clearly shows that the extra service of the Creek Route was established for the accommodation of the automobile traffic, and to relieve the congestion of this traffic via the Oakland Pier Route.

With the great amount of baggage and express to be transported across the bay via the Oakland Pier Route, it is apparent that there must necessarily be a great deal of delay in handling teams and automobiles via this route.

The diversion of vehicles from the Oakland Pier Route has added comfort and convenience to it as a passenger route.

There has been a large natural increase in transbay automobile traffic and there is nothing to prove that a considerable proportion of it would not have moved via the Creek Route even with hourly service.

In the month of August, 1911, there was carried via both routes 9,609 automobiles, of which 2,888 moved via Creek Route and 6,721 via Oakland Pier. In August, 1912, 14,710 autos were carried across the bay via both routes, or an increase of 5,101, or about 55 per cent.

If the Creek Route with hourly service in 1911 carried 30 per cent of the automobiles, it is safe to say that it would have carried some proportion of the great natural increase of 55 per cent in the traffic. Therefore, the loss which the applicant figures it sustains by diversion of traffic is purely speculative. I have no doubt that the improved service has greatly stimulated automobile travel and that applicant has been more than compensated for the loss in passenger fares by the increase in automobile travel.

It is idle to say that the service rendered via the Creek Route is as valuable to the passenger who lands at the foot of Broadway, Oakland, from a steamer as it is to the passenger who enjoys an electric train service for approximately 5 miles after leaving the steamer at Oakland Pier.

I am also unable to understand why any passengers should desire to take advantage of the Creek Route service, except it be that such passengers live within a zone on the Oakland side where they can walk from the foot of Broadway street to their respective residences.

I can see no good reason for penalizing the foot passengers who patronize the Creek Route boats by compelling them to pay an additional fare of 5 cents simply to better accommodate automobile travel, for which an additional boat has been placed in service. The passengers who ordinarily patronized the Creek Route system when an hourly service was maintained were apparently satisfied with this service and there appears to be no justice in increasing the fare for these passengers, in order that better accommodations may be provided for automobiles. It would be just as logical to say that because a certain class of people demanded an elaborate passenger train service, which in and of itself was unremunerative, that the freight rates should correspondingly be increased, in order to make up the deficit.

As I have before stated in this opinion, I do not consider the Creek Route service as being other than an auxiliary to or a part of the complete transbay system of the Southern Pacific Company. In the exhibits filed by the applicant, it is clearly demonstrated that it is so considered by the applicant, for the reason that the exhibit shows a gain in revenue via the Creek Route and a loss in revenue via the Oakland Pier Route, which it is proposed to make up by raising the rates of the Creek Route. There is nothing to show that the entire transbay service of the Southern Pacific Company is not profitable, or that the diversion of the automobile traffic from the Oakland Pier Route has rendered the service of that route unprofitable. It is certain that with the increase in traffic via the Creek Route since the automobiles and teams were diverted to that line, it has been more nearly profitable than ever before.

I submit herewith the following order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by the Southern Pacific Company to increase passenger fare between San Francisco and Broadway Wharf, Oakland, and a hearing having been duly held upon said application, and it appearing to the Commission from the evidence submitted that this application should not be granted,

*It is hereby ordered* that said application of the Southern Pacific Company to increase the passenger fare between San Francisco and Broadway Wharf, Oakland, be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this tenth day of January, 1913.

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DECISION No. 406.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR ORDER AUTHORIZING ISSUE OF BONDS OF THE FACE VALUE OF THREE HUNDRED AND NINETY-SEVEN THOUSAND DOLLARS.

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Application No. 304.

*Decided January 10, 1913.*

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Upon examination into applicant's total investment, *held*, that while some of the items included in the total are questionable as the proper subject of capitalization, excluding such doubtful items, there is a reasonable margin of investment in additions and improvements over the face amount of bonds issued and asked to be issued to warrant the granting of this application.

*Held, further*, That upon issue of the proposed bonds, the condition of applicant will be such that there will be a reasonable margin of physical value of property over the face value of outstanding bonds.

*Chickering & Gregory*, for Applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application by Western States Gas and Electric Company, for an order authorizing the issue of \$397,000 face value of its first and refunding 5 per cent gold bonds, payable June 1, 1941.

Applicant's financial condition has been considered by this Commission in connection with Applications No. 66 and No. 140. Reference to the opinions and orders therein is hereby made.

Applicant shows an investment in its properties, by way of additions and improvements since June 1, 1911, amounting to \$1,329,506.32.

As against this investment, there has been issued \$600,000 face value of bonds authorized by this Commission, so that adding the bonds herein asked to be issued, there will be a total of \$997,000 face value of bonds outstanding against this investment.

Some of the items included in the above total of investment are questionable as the proper subject of capitalization, but after an examination by the experts of this Commission, it appears clear that, excluding the doubtful items, there is a reasonable margin of investment in additions and improvements over the face amount of bonds issued and asked to be issued, to warrant the granting of this application.

Furthermore, the condition of this corporation, if this application is granted, and the bonds herein asked to be issued are sold, will be such that there will be a reasonable margin of physical values of property over the face value of outstanding bonds.

It appears that applicant has complied with the provision of its trust deed, that the earnings of applicant from the operation of its plants and properties and from income upon securities owned by applicant for a period of twelve consecutive months, after deducting from the earnings all operating expenses, shall have been in each case equal to at least twice the interest charges on all underlying bonds and on all bonds whose certification and delivery may be applied for.

In order to make the investments above mentioned, applicant borrowed money from various sources, and it is proposed to pay these debts with the proceeds of this proposed bond issue.

I recommend that the application be granted under the conditions set out in the order presented herewith.

#### ORDER.

Application having been made to the Railroad Commission of the State of California by Western States Gas and Electric Company, for an order authorizing the issue by said company of \$397,000 face value of its first and refunding 5 per cent gold bonds, and a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the discharge of its obligations, and that the purposes for which the proceeds of the sale of said bonds are to be used are not in whole, or in part, reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Western States Gas and Electric Company of \$397,000 face value of its first and refunding gold bonds, bearing interest at the rate of 5 per cent per annum, payable semiannually, maturing on the first day of June, 1941. Said bonds to be issued under and in pursuance of the terms of the deed of trust, or mortgage, dated the first day of June, 1911, made by said Western States Gas and Electric Company to the Girard Trust Company, as trustee, said bonds to be of the face value of \$1,000 each, and numbered

from M 3499 to 3895, both inclusive, upon the following conditions, not otherwise:

1. Western States Gas and Electric Company shall sell the bonds hereby authorized so as to net said company not less than 88½ per cent of the face value thereof, plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said bonds shall be used for the following purposes only:

(a) For the discharge of the following obligations, or so much thereof as such proceeds will permit:

|  |              |
|--|--------------|
| (1) Continental and Commercial National Bank-----    | \$100,000.00 |
| (2) United States Cast Iron and Pipe Foundry Company | 5,000.00     |
| (3) General Electric Company-----                    | 18,397.17    |
| (4) Standard Gas and Electric Company-----           | 250,000.00   |
| (5) Standard Gas and Electric Company-----           | 72,291.11    |

Permission is hereby given to pay, with the proceeds of the sale of said bonds hereby authorized, obligations in like amount, which may have been substituted for the obligations herein above specified.

(3) Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the 25th day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

(4) The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this tenth day of January, 1913.

## DECISION No. 407.

## IN THE MATTER OF THE APPLICATION OF THE CALIFORNIA-MICHIGAN LAND AND WATER COMPANY FOR PERMISSION TO EXERCISE FRANCHISE, AND FOR EXTENSIONS.

Application No. 273.

*Decided January 15, 1913.*

Where one water company makes application to invade the territory of an existing company and to furnish therein the same service, the determination involves consideration (1) as to whether the supply of water now furnished by the existing company is adequate; (2) has the existing company discharged its duty to the public by giving efficient service and reasonable rates; (3) if either of these propositions is decided in the negative, can the situation be improved by permitting applicant to exercise its franchise rights to enter into competition with the existing company; and (4) is applicant in possession, financially, and by reason of possessing an ample supply of water, to construct, equip and maintain a plant or system to adequately supply the consumers and water users of the tract in question at reasonable rates.

The Commission finds that the failure of the existing company to render adequate service at reasonable rates has been gross and inexcusable; that applicant is possessed of excess water in quantity amply sufficient to furnish adequate service, that it is prepared to construct the necessary distributing system and that it has secured, as customers, at prices satisfactory to them, substantially all of the customers of respondent.

The principle laid down in the matter of *Pacific Gas and Electric Company vs. The Great Western Power Company*, Case No. 269, referred to and held applicable to this case.

*Held, further.* Bondholders have such an interest in the property of a public utility, that they should exercise whatever influence they have to see that such utility adequately performs its duty to the public.

*Held, further.* That public convenience and necessity require and will require the granting of the application herein.

**B. J. Bradner**, for Applicant.

**Edwin C. Cribb**, for Cribb-Brodek Light and Water Company.

## REPORT OF THE COMMISSION.

**LOVELAND**, *Commissioner.*

Applicant desires to supply water for domestic and irrigation purposes to residents on what is known as the Cribb-Brodek Tract of land, Los Angeles County, California, and makes application herein, under section 50 of the Public Utilities Act, for the requisite certificate of public convenience and necessity. It proposes to develop the water supply upon its own lands which are adjacent to the Cribb-Brodek Tract.

The Cribb-Brodek Light and Water Company is at present distributing water upon this tract and has been engaged in the business

for a number of years. The existing company opposes the invasion of its field of operation by applicant.

Applicant contends that the source of water supply of respondent is inadequate to the needs of the community; that the rates charged are excessive; and that the property owners upon the tract, in consequence, have been unable satisfactorily to develop their lands. In support of this contention, the petition sets forth that about eighty (80) of the property owners, approximately seven eighths of all those residing upon the tract, have contracts with applicant to be supplied with water for a period of three years at rates and upon terms and conditions prescribed in the contracts. Furthermore, that these contracts were made upon the part of applicant in reply to a demand of the consumers voiced at a mass meeting held by them for the purpose of discussing the water situation, and that applicant stands ready to furnish the water at the rates agreed upon, although it does not believe there will be any profit in the business until the community becomes more thickly settled and the consumption of water greater.

The sole question before the Commission is whether "the present or future public convenience and necessity require or will require" (section 50, Public Utilities Act) the construction by applicant of its proposed water distribution system and the exercise of the rights and privileges under the franchises granted by the local authorities, pursuant to which it obtains the privilege of furnishing water in this district.

The determination involves consideration (1) as to whether the supply of water now furnished by the existing company is adequate; (2) has the existing company discharged its duty to the public by giving efficient service and reasonable rates; (3) if either of these propositions is decided in the negative, can the situation be improved by permitting applicant to exercise its franchise rights to enter into competition with the existing company; and (4) is applicant in position, financially, and by reason of possessing an ample supply of water, to construct, equip and maintain a plant or system to adequately supply the consumers and water users of the tract in question at reasonable rates.

A hearing was had in Los Angeles November 21, 1912, following which briefs and supplemental papers were filed and an examination made into the entire situation by the Commission's Engineering Division. Upon the evidence introduced and all the documents in the matter the facts may now be presented.

California-Michigan Land and Water Company, a domestic corporation, was incorporated December 21, 1910, with the primary object of engaging in real estate transactions, but having the chartered right to develop and sell water and other substances. Subsequently it acquired

certain property in Los Angeles County known as the Michillinda Tract, comprising about 167 acres, which the company proposes to subdivide and sell in small lots for suburban residential purposes. According to engineering estimates, submitted by applicant, some two hundred inches of water may be developed upon this tract, which amount is stated to be largely in excess of the subdivision requirements.

Upon application of this company, the board of supervisors of Los Angeles County, California, granted it a franchise under date of May 13, 1912, to construct a water distributing system upon certain streets and highways in said county of Los Angeles, California, and to distribute and sell water for domestic and irrigating purposes for a period of forty years. The area covered in the franchise consists of about five thousand acres, mostly undeveloped and with a scattered population. Within this area, however, are several tracts under cultivation by individuals owning small acreages therein. One of these is the Sunny Slope Vineyard Tract, the residents upon which are supplied with water by the Sunny Slope Water Company. Another is the Cribb-Brodek Tract. It is applicant's present desire to distribute water only to those residing in the Cribb-Brodek Tract.

In addition to its present supply, which the Commission is satisfied is abundant for the purposes stated, applicant has made arrangements to purchase water from another source in the amount of several hundred inches and stands ready to develop this source if necessary.

The Cribb-Brodek Light and Water Company has between eighty (80) and one hundred (100) consumers. At a hearing twenty of these appeared as witnesses for applicant and gave evidence as to the inadequacy, inefficiency and unreasonable rates of the Cribb-Brodek Light and Water Company. This evidence substantially is to the effect that the inadequacy of supply, the low pressure and the high rates charged, all combine to make impracticable the agricultural development of their lands; that when the company was requested to better the service, the consumers were told that the water operations were not profitable, and the threat was made to shut down the plant. They also testified that some of the consumers had invested in the capital stock of the Sunny Slope Water Company, a mutual concern, in order to obtain rights to water that went with such ownership.

The prices charged by the respondent company have varied from time to time and have not been adhered to with respect to all consumers alike. When the consumers began negotiations to obtain water from applicant, respondent was charging a minimum monthly rate of one and 50/100 (1.50) dollars for fifteen hundred (1,500) cubic feet (11,250 gallons) for irrigation, with eight cents per hundred cubic feet for all used in excess of the minimum, and had served notice of



its intention to increase the minimum rate to two (2) dollars for fifteen hundred (1500) cubic feet.

Applicant proposes to make a minimum monthly charge of two (2) dollars for ten thousand (10,000) gallons (the equivalent of 1,333 $\frac{1}{3}$  cubic feet), with a flat rate of three and one fourth (3 $\frac{1}{4}$ ) cents per hundred cubic feet for all in excess of the minimum. With this proposed rate, the consumers have evidenced their entire satisfaction by entering into contracts for service. The Commission does not in this proceeding pass upon the reasonableness of said charge or rate, nor does it pass upon any of the contracts for service.

The Cribb-Brodek Light and Water Company purchased its water system from the Cribb-Brodek Land Company, paying therefor approximately fourteen thousand (14,000) dollars. This system consists of a well upon the tract in question, a lift pump, the distributing system on the tract and two cement-lined reservoirs. With the water system also was acquired several small separate parcels of land which were subsequently sold for five thousand five hundred (5,500) dollars and a parcel of land in the Sunny Slope Vineyard Tract which respondent still owns. This latter property is water-bearing land and is retained in anticipation of developing and distributing the water, for which purpose a franchise has been obtained from the local authorities permitting the conveyance to and distribution of such water upon the Cribb-Brodek Tract, among other lands.

The testimony shows that the well is about five hundred feet deep and the water which stands in it, to within about eighty feet of the ground surface, furnishes a supply of not exceeding thirty inches; that through improper handling, this well has sanded to a depth of twenty-four feet and the sand, at times pumped with the water, seriously interferes with good service; that respondent has been delivering into its system a small quantity of water obtained from the Sunny Slope Water Company, which in itself is an admission of the inadequacy of its own source of supply.

For the twelve months ended October 31, 1912, respondent's gross earnings from water operations were two thousand five hundred fifty-eight and 45/100 (2,558.45) dollars; its expenses, including taxes and seven per cent interest on ten thousand (10,000) dollars bonds, two thousand two hundred thirteen and 76/100 (2,213.76) dollars, leaving a net revenue of three hundred forty-four and 69/100 (344.69) dollars without deducting the maintenance charges, depreciation, or reserve for sinking fund.

The weight of evidence leads to no other conclusion than that respondent has been greatly remiss in its obligations to the public. Its consumers are entitled to adequate service at all times and at reasonable rates. Its failure to render adequate service at reasonable

rates has been gross and inexcusable. Owning, as it claims to do, an ample additional supply of water, and holding a franchise which would permit it to develop and distribute from such source, it has elected to follow a policy of indifference to the needs of its patrons. By reason of inconsistent charges, insufficient and poor service, it has prevented its consumers from improving their lands and has compelled those who were in a position to do so to obtain service elsewhere. It has by its conduct aroused generally an antagonistic feeling toward it. Some improvements to its system have been made, but not of an extent and character to make the plant as a whole equal to the fair requirements of the community.

It satisfactorily appears that California-Michigan Land and Water Company, the applicant herein, is possessed of water beyond its own needs; that the excess is amply sufficient for the purposes stated; that it is prepared to construct the necessary distributing system; and that it has secured, as customers, at prices satisfactory to them, substantially all of the customers of respondent. Every reason exists why the application should be granted except for the consequent effect upon the value of the property of the existing company, against which is outstanding a bonded indebtedness.

This naturally brings up the question as to what attitude this Commission should and will assume in situations where, by granting the application of a public utility to serve the public in a territory or section already occupied by a like public utility, when the latter has been remiss in its duty to its patrons, and the granting of such application will tend to reduce the value of the property of the company already in the field, and incidentally cause loss to the holders of bonds which have been issued against such property.

In this particular case it happens that the bonds are largely owned by the same parties who control the protesting company, and who are responsible for the failure to supply sufficient and adequate service at reasonable rates to the tract comprehended in the application; but the Commission believes that the attention of bondholders generally should be called to the fact that failure upon the part of the company whose bonds they hold, to perform its duty to the public by rendering adequate service at reasonable rates, will ordinarily result in this Commission's permitting competition with such delinquent company, with the probable result that the property upon which the bonds are a lien will be depreciated in value.

Bondholders have such an interest in the property of a public utility that they should exercise whatever influence they have to see that such utility adequately performs its duty toward the public.

In Case No. 269, *Pacific Gas and Electric Company vs. The Great Western Power Company*, heretofore decided by this Commission, it

was held, and the principle was announced, that public utilities must not wait "until competition is at their door," before improving inefficient service and correcting unreasonable rates. I quote from the language of that decision:

"If any territory served by an existing utility is afflicted by such utility with excessive rates or inefficient service, and a second utility of the same kind desires to enter such territory, and this Commission should say to the existing utility: 'Although while you had matters your own way you lost sight of your duty to the public, yet we still reserve for you this territory in consideration of your future good behavior,' in how many instances does any one suppose a new utility would apply to enter a territory served by an existing utility, when the only effect of all its trouble and expense would be the cheapening of the rate and the improvement of the service of the existing utility? \* \* \*

"Rather do we announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission or other governmental authorities, to accord to the communities of this state those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

I believe that principle is sound and should be adhered to in this case, and I therefore find that public convenience and necessity require and will require the granting of the application of the California-Michigan Land and Water Company to exercise its franchise rights and serve water for domestic purposes and for irrigation to the residents and water users of that section or tract comprehended in this application now served by the Cribb-Brodek Light and Water Company. I recommend that the following order be issued:

#### ORDER.

The California-Michigan Land and Water Company having heretofore filed with this Commission its application under section 50 of the Public Utilities Act for a certificate of public convenience and necessity and for permission to exercise its franchise rights and privileges under a certain franchise heretofore, to wit, on May 13, 1912, granted to it by the board of supervisors of the county of Los Angeles, California, to construct, maintain and operate a distributing system for

the purpose of supplying water for domestic purposes and for irrigation to the residents and water users of a certain tract or section in Los Angeles County, California, known and described in this application as the Cribb-Brodek Tract;

And the case having been regularly heard, and it appearing from the testimony that the Cribb-Brodek Light and Water Company, which company has heretofore served and is now serving the said tract, has been remiss in its duty to the public and failed to give to its consumers adequate service at reasonable rates, and that through such failure residents of the Cribb-Brodek Tract have been unable to secure water either in sufficient quantity or at reasonable rates to improve their lands, while some have been compelled to arrange with other adjacent companies for water to save their crops and lawns, and that said Cribb-Brodek Land and Water Company has been repeatedly requested in the past to improve its service and reduce to a reasonable figure its rates for water for irrigation, but has ignored and disregarded such request;

And it appearing further that the California-Michigan Land and Water Company is in condition, financially, to install a system and serve the residents and water users of the Cribb-Brodek Tract, and that it has or can develop an ample supply of water for that purpose in addition to that which it will require to adequately serve other sections covered by its franchise or franchises, and that it has offered to serve water to the residents and users of the Cribb-Brodek Tract at a minimum monthly charge of two dollars (\$2.00) for ten thousand gallons (equivalent to one thousand three hundred thirty-three and one third ( $1,333\frac{1}{3}$ ) cubic feet), with a flat rate of three and one fourth ( $3\frac{1}{4}$ ) cents per hundred (100) cubic feet for all in excess of the minimum, with which rate the consumers have evidenced their satisfaction by entering into contracts for the service;

Now, therefore, be it ordered that the California-Michigan Land and Water Company be, and it is hereby granted permission to construct, equip and maintain a plant or system for the distribution of water for domestic purposes and for irrigation in the tract known and described as the Cribb-Brodek Tract in the county of Los Angeles, State of California; provided, that said California-Michigan Land and Water Company shall supply water to the residents and users of said tract at the rate of not to exceed two dollars (\$2.00) per month for ten thousand (10,000) gallons (one thousand three hundred thirty-three and one third ( $1,333\frac{1}{3}$ ) cubic feet) and three and one fourth ( $3\frac{1}{4}$ ) cents per hundred (100) gallons for all water used in excess of the ten thousand (10,000) gallons per month; and provided, further, that should said California-Michigan Land and Water Company supply any of its cus-

tomers, regardless of where they are located, at a rate less than the rate above mentioned to be charged the consumers of the Cribb-Brodek • Tract, then the rate to said consumers of said Cribb-Brodek Tract shall immediately be reduced to such lower rate.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of January, 1913.

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Decisions Nos. 408, 409 and 410, grade crossings; not printed. See end of volume.

DECISION No. 411.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON,  
TOPEKA AND SANTA FE RAILWAY COMPANY FOR PER-  
MISSION TO CLOSE A CERTAIN CROSSING AT GRADE  
NEAR THE STATION OF PINOLE IN CONTRA COSTA  
COUNTY, CALIFORNIA.

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Application No. 320.

*Decided January 15, 1913.*

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REPORT OF THE COMMISSION.

ORDER DISMISSING APPLICATION.

Applicant in the above entitled proceeding, having on January 8, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the application in the above entitled proceeding be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of January, 1913.

## DECISION No. 412.

IN THE MATTER OF THE APPLICATION OF PEOPLES  
WATER COMPANY FOR AN ORDER AUTHORIZING ISSUE  
OF NOTES AND ISSUE AND PLEDGE OF BONDS AS COL-  
LATERAL SECURITY THEREFOR.

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Application No. 129.*Decided January 15, 1913.*

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Supplemental order further extending time for which bonds may remain pledged as collateral security to promissory notes.

**SECOND SUPPLEMENTAL ORDER.****REPORT OF THE COMMISSION.**

This Commission having heretofore, on July 20, 1912, made an order in the above proceeding authorizing Peoples Water Company to issue promissory notes to the aggregate amount of five hundred thousand (\$500,000) dollars, and to issue and pledge as security for the payment of these promissory notes Peoples Water Company general mortgage five per cent thirty-year gold bonds to the aggregate amount of one million five hundred thousand (\$1,500,000) dollars, upon certain conditions specified in said order, one of which conditions was that the authority therein granted should apply only to notes and bonds issued by Peoples Water Company on or before the thirtieth day of October, 1912, which date was extended by this Commission in a supplemental order made on October 18, 1912, to and including the twenty-eighth day of January, 1913; and

Peoples Water Company having on December 18, 1912, filed with this Commission a second supplemental application requesting that the time limit placed upon the authority granted in this Commission's order in the above entitled proceeding, made on July 20, 1912, be further extended to and including the twenty-eighth day of April, 1913; and

This Commission being of the opinion that this is not a case in which a public hearing is necessary, and also that there is no objection to the granting of this second supplemental application,

*It is hereby ordered* that the time limit placed upon the authority granted in this Commission's order made in the above proceeding on July 20, 1912, be and the same hereby is extended from the twenty-eighth day of January, 1913, to and including the twenty-eighth day of April, 1913.

Dated San Francisco, California, this 15th day of January, 1913.

## DECISION No. 413.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
COUNTIES GAS COMPANY OF CALIFORNIA FOR AUTHOR-  
IZATION TO ISSUE ADDITIONAL BONDS.

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Application No. 230.*Decided January 15, 1913.*

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Upon compliance with certain conditions precedent, prescribed in previous order,  
applicant is permitted herein to issue additional bonds.

*Wilson & Wilson*, for Applicants.

## SUPPLEMENTAL ORDER.

## REPORT OF THE COMMISSION.

This application was originally heard on October 14, 1912, at which time the Commission rendered its opinion and made its order. The opinion recited that after a careful investigation of all the circumstances surrounding and affecting the application that applicant had justified its right to issue additional bonds as soon as the conditions as to its earnings set forth in the mortgage given to the Los Angeles Trust and Savings Bank were complied with; and in the order the Commission announced that upon receipt of a verified statement from applicant, that its earnings are such as to entitle it to issue further bonds under and in compliance with the stipulations of said mortgage, the Commission would, by supplemental order from time to time as such showings are made, authorize the issue by applicant of further bonds.

The Commission now having received such verified statements from applicant, approved by the trustee, showing that applicant is entitled to issue additional bonds in the sum of nineteen thousand five hundred (19,500) dollars,

*It is hereby ordered* that the Southern Counties Gas Company of California be, and it is hereby, authorized to issue additional bonds in the sum of nineteen thousand five hundred (\$19,500) dollars, subject to the former order of the Commission as to disposition of the funds received from the sale of said bonds, reports thereon to the Commission, etc.

Dated at San Francisco, California, this 15th day of January, 1913.

## DECISION No. 414.

JULIUS HEYMAN COMPANY VS. SOUTHERN PACIFIC  
COMPANY.

Case No. 267.

*Decided January 15, 1913.*

Carriers will not be permitted to force down rates to destroy competition and then ask immunity from the consequence of their action on the grounds that they were compelled to make such low rates.

*Held.* That a rate of 35 cents per ton of 2,000 pounds is a reasonable rate for the transportation of lumber between transfer track of connecting lines in San Francisco and Elkton where no main line movement is involved.

*R. W. Kearney*, for Complainant.

*Geo. D. Squires*, for Southern Pacific Company.

## REPORT OF THE COMMISSION.

*EDGERTON, Commissioner.*

In this case the Commission was requested by certain shippers to require the Southern Pacific Company to restore switching charges between transfer tracks of connecting carriers in San Francisco and Elkton, California. Elkton is within the switching limits of San Francisco, but it has been excluded from the tariff in so far as switching charges applied on traffic originating at, or destined to, points within the switching limits of connecting carriers' yards in San Francisco.

Elkton is still considered within the switching limits of San Francisco on such traffic as the Southern Pacific Company may receive a main line haul. In other words, that company is willing to assess regular switching charges on business to or from Elkton when it receives revenue from a line haul, but contends that when its entire revenue is that received from switching it is inadequate for this service.

Elkton is located approximately six miles from the freight depot at San Francisco and Mr. Toll, witness for the Southern Pacific Company, testified (page 23, Transcript) that Elkton was included within the San Francisco switching limits at the time of the San Francisco conflagration in order to assist the United Railroads of San Francisco to rehabilitate the street car system, that company having some shops and assembling yards in the vicinity of Elkton where material impossible to handle in the city proper could be stored. It was contended that the extension of switching limits and rates to Elkton was never intended to cover movements originating at industries within San Francisco, and on which the Southern Pacific Company received nothing but switching charges.



I believe this to be the prime reason for extending the switching limits to Elkton, for it seems hardly probable that the Southern Pacific Company would extend its switching limits to this point under ordinary conditions. To reach Elkton cars must be transported about six miles through a thickly settled part of San Francisco, over a single track line of excessively heavy grades, and I believe that revenue of \$2.50 per car from the transfer track of connecting lines to Elkton, involving several movements by switch engine, is unreasonably low. At the same time, I am frank to say that I consider the rate charged of 50 cents per ton on lumber excessive.

The Southern Pacific Company maintains a rate of 60 cents per ton from San Francisco to San Jose—50 miles—and a rate of 50 cents per ton to Ocean View, several miles beyond Elkton. It also publishes a rate of 50 cents per ton on freight, regardless of classification, between San Francisco and South San Francisco.

It has been alleged from time to time with considerable earnestness that the rates to San Jose were low, so-called “water compelled” rates. In my judgment, rates are water compelled only to level to which the water competition forces them. Whenever a carrier, under ordinary circumstances, goes below the rates of its competitor it certainly cannot plead that it was forced to do so.

I do not believe that any competitor of the Southern Pacific Company could ever carry lumber from San Francisco to San Jose for 60 cents per ton, or anything like that figure. Lumber certainly can not be handled by steamer to Alviso, 35 miles, unloaded on a wharf at considerable expense and teamed twelve miles to San Jose for 60 cents per ton.

Carriers will not be permitted to force down rates to kill off competition and then ask immunity from the consequence of their action on the grounds that they were compelled to make these low rates. I am of the opinion that a rate of 35 cents per ton of 2,000 pounds is a reasonable rate for the transportation of lumber between transfer track of connecting lines in San Francisco and Elkton where no main line movement is involved, and the Southern Pacific Company should publish such rate.

The Southern Pacific Company should not be required to switch freight where no main line movement is involved from San Francisco to Elkton for \$2.50 per car and the application to require that company to do so should be denied.

The matter of reparation asked for at the hearing cannot be considered in this decision, as it was not properly a part of the case.

I recommend the following order:

**ORDER.**

Application having been made by certain shippers for the restoration of switching charges on freight between transfer tracks of connecting

carriers in San Francisco and Elkton, as originally shown on page 21, items 68 and 69 of Southern Pacific Company's Terminal Tariff, No. 230-G, C. R. C. 1260, and a hearing having been duly held,

*It is hereby ordered* that said application be and the same hereby is dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of January, 1913.

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Decisions Nos. 415, 416 and 417, grade crossings; not printed. See end of volume.

DECISION No. 418.

TYNDALE PALMER, OTAY WATER LEAGUE ET AL.  
*vs.*  
 SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY.  
 CITY OF SAN DIEGO, INTERVENOR.

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Case No. 261.

*Decided January 21, 1913.*

The defendant herein duly appropriated certain water for distribution and sale to the public for irrigation, domestic and other purposes in designated places in San Diego County. Thereafter it substantially confined its service to the furnishing of water, chiefly for domestic purposes, to the inhabitants of the cities of San Diego and Coronado and suburban territory, and for some years has attempted to conserve its supply of water for such purpose to the exclusion of certain country districts which also were among the designated places of intended operation.

Complainants, being within the flow of defendant's system and within the places of designated use of the water, and desiring to be supplied with water for irrigation purposes, asked that defendant be required to supply water to all alike upon demand of those residing in any of the classes of communities for whom, and in accordance with the purposes for which, the water was appropriated, that reasonable and uniform rates be fixed, and for other relief from alleged unjust discrimination.

Complainants are not claiming the water on the ground of riparian rights, they and their predecessors having parted with such rights to defendant, but on the ground of the said appropriation.

The main questions raised are:

*First*—Does the same preference as between the users of water for domestic purposes and users of water for other purposes exist where both classes are within the places of designated use of a public service water company as admittedly exists between owners of riparian lands who desire to use water for these different purposes?

*Second*—Do the places of designated use set out in the notices of appropriations give a vested right to all parties within such limits to the use of water, regardless of the character of the use or the order of the taking?

*Held*, That the designation by the appropriator of places of designated use in compliance with the statute (Civil Code, sections 1410 to 1422) is only necessary in the case of the taker of water to which there are no rights, except those of the public, and that, even when such taker of water designates places of intended use, such designation confers no vested rights upon any one: *Price vs. Riverside*, 56 Cal. 430; *Hildreth vs. Montecito Creek Water Co.*, 139 Cal. 22; *Leavitt vs. Lassen Irrigation Co.*, 157 Cal. 82; *Miller vs. Bay Cities Water Co.*, 157 Cal. 256; and *Thayer vs. California Development Company*, cited by complainants, discussed and distinguished.

*Held*, That sections 31, 32, 33, 34, and particularly 35, of the Public Utilities Act give the Commission ample authority to require the taking on of new consumers or prevent such action by a water company if the public convenience and necessity will be served by such action on the part of the Commission; that the test for admission to the class which will thereafter be protected, even to the ratable apportionment of the supply in times of scarcity, is the reasonableness of the request to be admitted based upon the facts in each particular case, and in the admission of new consumers by a water company it would be just as unjust, and just as much in conflict with the Public Utilities Act, for it to discriminate by admitting one applicant and refuse to admit another similarly situated as it would be to violate any other of its substantive duties; that the present supply of defendant is reasonably taxed.

The policy of the State being against the reservation for the use of those not now ready to avail themselves of the supply, it would seem that the only warrant for storage beyond actual present needs is in the fact that in reality there is a need for the reserve for contingencies that may reasonably be expected to occur.

*Held*, That while the practice of defendant to maintain a seven years' storage may be unreasonable, the amount which is now stored is not in excess of the reasonable needs which presently exist, and such being the case complainants can not be admitted into the class at the present time, without jeopardy and injury to the present consumers under this system.

*Held*, The fact that a prospective consumer has another supply is material and is one of the facts which could and should be taken into consideration in determining the reasonableness of the application to be served by the public utility company.

*Held*, That the question of fraud raised by complainants is a matter to be determined by a court.

The status of the parties hereto is not affected by an interim transfer of defendant's property to the city in question, it having been specifically stipulated by the city, as a condition precedent to its acquiring the property, that the city takes the property understanding that any legal claim for water which may be enforced against the company may likewise be enforced against the city. Complaint dismissed.

*Tyndale Palmer*, for Complainants.

*H. E. Doolittle, H. L. Titus, and R. G. Dilworth*, for Defendants.

*W. R. Andrews*, city attorney, for Intervenors.

#### REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

On March 23, 1912, the complaint in this case was filed on behalf of certain residents and citizens of San Diego County residing and owning land in what is known as the Otay Valley. It is alleged in said complaint that the defendant is a public service water company, having

appropriated water for sale, rental and distribution within the county of San Diego, and that the complainants are within the flow of the system of defendant and within the places of designated use as set out in the notice of appropriation of defendant. Relief is prayed on six grounds, set out in the complaint as follows:

“*First*—That your honorable body, at the earliest possible date, make (1), an investigation and examination of defendant’s water system, and order a hearing, to determine what part thereof is necessary for the service required by the complainants herein;

2), that you cause a physical valuation to be made of the entire plant, as provided by section 47 and section 70 of the Public Utilities Act, that you determine its cost, the cost of operation, and the depreciation thereof; (3), that you then fix rates to be charged and collected by the defendant for water for irrigation and other purposes which shall be in accordance with the requirements of the Public Utilities Act, commensurate with the value of the service to the complainants, and just and reasonable alike to the water users and to the company; as required by section 13 of said Public Utilities Act, and by the water law of 1885.

“*Second*—That the defendant be ordered forthwith to cease discrimination in respect to charges for water supplied by it, and that defendant be ordered to supply water to all the complainants who make legal application and tender of rates therefor, and who belong to the classes or communities for whom the water was appropriated as stated in defendant’s notice of appropriation of water, and that such water be sold to all such persons from this time forward at the lowest rate now charged therefor until such time as your honorable body has fixed other rates, or until other rates have been established in accordance with the Public Utilities Act.

“*Third*—That defendant be ordered forthwith to commence construction at its own cost and expense of a system of distributing pipe lines, and to complete within four (4) months from date of this complaint, such a distribution system as will be adequate to supply complainants with water for irrigation and other uses upon their said lands, and to provide all pipe lines, laterals, meters, gates, valves and appliances that may be necessary to deliver water to the property line of the lands of complainants at the proper point for gravity irrigation; and that your honorable body order water to be delivered, as above provided, at the earliest practicable date to all complainants who make proper application and tender therefor, whether the entire distribution system so ordered be completed or not.

“*Fourth*—That defendant be ordered forthwith to discontinue making a charge for appliances or equipment necessary to deliver the water to the property line of the water user, or that may be required to measure said water.

“*Fifth*—That defendant be prohibited forthwith from making

any different rate or charge for water for domestic use where the same water is being supplied to the same lands for irrigation purposes.

“*Sir*th—That your honorable body will give such other and further relief as is just and proper in the premises.”

The defendant answered the complaint on April 25, 1912, admitting many of the allegations of the complaint, but setting up the fact that all of the appropriated water is now devoted to a public use, mainly within the cities of San Diego and Coronado for domestic uses, and that the defendant has no water in its possession which can be accorded to the complainants without injury to its present consumers.

On May 20, 1912, the city of San Diego asked leave to intervene, and on May 31st such leave was granted. Said intervenor sets out the facts that in 1905 a contract was entered into between the defendant company and the city of San Diego for an amount of water not exceeding 7,760,000 gallons per day for a period of ten years from the first day of May, 1906, at an agreed price of four cents per thousand gallons; and further that the said city of San Diego was in the midst of negotiations for the purchase and lease of a greater part of the property of defendant for the purpose of utilizing the supply within the city of San Diego.

Meanwhile, Application No. 169 was filed by the defendant herein asking the approval of this Commission of the sale by said defendant to the city of San Diego of certain of its property, and the lease, with an option to sell at the expiration of said lease, of all of the remainder of the property of defendant except that portion of the pipe line of the defendant used to supply the city of Coronado. In this application the city of San Diego thereafter joined, and the complainants herein asked and were granted leave to intervene; so in application No. 169 the same parties were before this Commission as are before it in this case.

The hearing of the case before us was begun at San Diego on August 19th, and thereafter on August 30th Application No. 169 was heard, and by agreement all of the evidence in both cases is to be considered in each. A decision was rendered in Application No. 169 on September 12, 1912, wherein the application of the Southern California Mountain Water Company to sell and lease and the said city of San Diego to purchase and take by lease was granted on two conditions, which are set out in the order in Application No. 169, the design of which was to maintain the status of the parties in Case No. 261 and prevent the transfer of the property from affecting the issues of the case here pending. Such being the case it is proper to consider the matter now before us and to ascertain the rights of the parties on the basis of the ownership of the property devoted to the public use by a private cor-

poration, it having been specifically stipulated by the city as a condition precedent to its acquiring the property "that the city takes the property of the company understanding that any legal claim for water which may be enforced against the company may likewise be enforced against the city. The intent of this condition is that the city shall not raise in any proceeding the point that the mere fact of this transfer has served to change the legal status of the property with reference to its public duties and charges; this stipulation not in anywise morally or legally to bind the city against contesting any claim against the system except on the one ground stated, namely, that the fact of transfer affects the status of the property to such a degree that valid claims against the system in the hands of the company become invalid by reason of the transfer to the city." As I have said, by reason of the parties agreeing to this stipulation, we may now consider the issues independent of the fact that there has been a transfer of this property made by the defendant herein to the city of San Diego.

The main question to be decided being the right of the complainants to receive water from the system of the defendant, it is evident that it is advisable to determine this question before proceeding to fix the rates of defendant, because if it should be determined that the complainants are not entitled to water the fixing of rates becomes unnecessary in this proceeding, while if they are so entitled, rates may thereafter be fixed with no added labor, the two enquiries being independent and unrelated. Hence at the hearing heretofore held the questions of rates and conditions of service were not considered, but their determination postponed until the main question shall have been decided.

It seems that the following are the pertinent facts involved herein: The defendant is a corporation, organized under and by virtue of the laws of the State of California for the purposes of selling, renting and distributing water to the public within certain specified territory within the county of San Diego for the purposes of irrigation, mining, manufacture, mechanical and domestic uses. The places of intended use, as set out in the notices of appropriation are as follows:

"Scheckler's Mesa, Scheckler's Valley, Dulzura, Jamul Rancho, Jamul Mesa, San Miguel Mesa, Janal Rancho, National Rancho, Otay Rancho, Otay Mesa, Otay Valley, Tia Juana Valley, Head of the Bay Region, Jamacha Rancho, Spring Valley, El Cajon, El Cajon Rancho, Ex-Mission Rancho, Pueblo lands of San Diego, and all the neighboring and adjacent lands and all the lands that can be irrigated from the water of said stream, also the city of San Diego, National City, Coronado City, Otay, Tia Juana, and any and all neighboring and adjacent lands, cities, towns, villages, hamlets or places; also all towns, cities, hamlets, villages, manufacturing centers, mining camps, or any other source of lawful and

useful demands for said water that may hereafter arise upon the territory herein described, or adjacent therein, or adjacent thereto."

It is actually supplying water to the city of San Diego and the city of Coronado, and is under contract to furnish an amount approximating fourteen million (14,000,000) gallons per month to parties outside these cities. The evidence is conflicting with reference to the exact amount and it also is not established just how much is being furnished under the several contracts, but it clearly appears that, comparatively speaking, little water is now, or ever has been, delivered by this company to any users outside the city of Coronado and the city of San Diego and suburban territory, which although not within the city limits, is for all practical purposes a part of the city of San Diego.

It is also clearly established that, except in the city of San Diego itself, only a very small quantity of water is being devoted to uses other than domestic. It certainly has been the policy of this company for some years to attempt to conserve its supply of water for the cities within its places of intended use to the exclusion of the country districts. The contracts which are in evidence, however, do not limit the use of the water to domestic purposes, but the evidence shows that the main uses to which the water of this system has been applied are domestic uses.

The defendant's water system consists of four dams and reservoirs, known as the Morena dam and reservoir, the upper Otay dam and reservoir, the lower Otay dam and reservoir and the Highland reservoir, together with conduits connecting these reservoirs. There is also a pipe line from the lower Otay reservoir to the city of San Diego and a filtering plant and other appurtenances in connection with this pipe line and a small reservoir known as the Chollas Heights reservoir, near the city of San Diego, used mainly as a regulating agency. The total storage capacity of these reservoirs is about twenty-nine billion one hundred and eighty million (29,180,000,000) gallons. On the first day of July, 1912, the total amount of water impounded in the company's system was nine billion three hundred and eight million four hundred and two thousand (9,308,402,000) gallons. The average daily consumption of water in the city of San Diego for the period ending the first day of July was about six million five hundred thousand (6,500,000) gallons, while the average amount for the same time furnished to the other users, including the city of Coronado, was about seven hundred thousand (700,000) gallons, making the total average daily consumption about seven million two hundred thousand (7,200,000) gallons. The present supply would be sufficient for about  $3\frac{1}{2}$  years for the present consumers without taking into consideration seepage or evaporation. These losses, however, play an important part

in any system which is at all dependent upon storage. The percentage of loss by evaporation of course varies in accordance with the depth of the reservoir as compared with its surface area and the height of the water in such reservoir. The evaporation loss is a loss from the surface of the reservoir, and the surface of such reservoir will be lowered a certain distance by evaporation losses, regardless of its depth or size. An inch evaporation loss from a reservoir one foot in depth would, of course, represent at least one twelfth the capacity of the reservoir, while if a reservoir be two feet in depth the same quantum of loss will occur, but it will represent only one twenty-fourth the storage capacity of the reservoir.

Hence to determine evaporation losses we must know the character of the reservoir. The testimony of the witnesses in this case shows that there is at least an evaporation loss of one seventh from its water system annually under the present conditions. Should we have a period of drought which yearly lowered the surface of the reservoir it would be seen that the percentage of loss would increase annually during such drought.

This water system is at the present time the only available source of supply for the city of San Diego.

The Morena watershed of the company is 135 square miles in extent, the Upper and Lower Otay watersheds approximately 100 square miles in extent, the Barrett watershed 115 square miles in extent, making a total watershed of 350 square miles. Evidence has been introduced showing the run off of the adjoining Sweetwater watershed during all of the years from 1887 to 1907, inclusive. During the years in question the run off from this watershed, which is 186 square miles in extent, fluctuated between nothing for the years 1889-1900, 1901-02, 1902-03, 1903-04, to 23,983,700,400 in 1894-95. The only other time in these twenty years when the amount exceeded 10,000,000,000 of gallons was in 1905-06, when the amount was 11,434,500,000 gallons. Comparing the Sweetwater watershed with the watersheds connected with this system for the same years, as shown in defendant's Exhibit 9 just referred to, on the direct ratio of area, it will appear that a repetition of conditions which are a matter of history in San Diego County would seriously impair the supply even for the most limited domestic purposes of the cities now receiving from this system. When we take into consideration the further fact that the Barrett dam and reservoir site is below the Morena dam and reservoir and at the beginning of the Dulzura conduit, and that no dam has been constructed at this point, and that in times of flood when most catchment occurs, this 115 square miles of catchment area contributes no more to the system of defendant than it is possible for the Dulzura conduit to carry, we are



impressed with the fact that until this dam is constructed that it does not need nearly the drought which has heretofore occurred in the county of San Diego to render this system utterly inadequate to the needs of the inhabitants of these cities.

During the seven years of drought referred to in the testimony the Sweetwater water system only impounded 351,855,900 gallons of water, or sufficient to last the city of San Diego at its present daily consumption a little less than forty-seven days. And if we assume like conditions of the Southern California Mountain Water Company's system during these seven years, only sufficient water would have been impounded to have supplied the city of San Diego for less than a year. In fact, it is not seriously contended by any one that there is sufficient water in this system without further development to meet what may be the needs of the inhabitants of urban territory for domestic purposes alone.

The city of San Diego in the year 1900 had a population of 17,700; in 1910, 39,578; in 1912 a population in the neighborhood of 60,000, according to the estimates presented, and that it is rapidly increasing in population is admitted. It is in evidence that from the years 1897 to 1904 there was a seven years' drought in the county of San Diego. On the basis of this drought, during which there was practically no catchment in any reservoir in San Diego County, engineer witnesses for defendant testify that safety for the city of San Diego requires a storage of water sufficient to last for seven years. On the basis of the present population and the present rate of increase and the theory that there should always be seven years' storage on hand, witness O'Shaughnessy, engineer for defendant, testified that to make the city of San Diego safe, there should be on hand about twenty-eight billion gallons of water instead of 9,308,402,000 gallons that was on hand July 1, 1912.

It is admitted that the lands of complainants are within the places of designated use set out in the notices of appropriation of the defendant, but that no water has ever been delivered to them for purposes of irrigation. It is further admitted that while the lands represented by complainants are only 355 acres in extent yet there are more than 9,000 acres in the Otay Valley, and approximately 40,000 acres in the aggregate, as much entitled to water on the theory of the complainants as are the complainants when their rights are asserted. In fact, Mr. Palmer, attorney for the complainants, states, at page 138 of the transcript, that it is his position that all of the owners of land within the places of designated use are equally entitled to the water with the complainants.

Evidence was introduced tending to show that these complainants and other inhabitants of the Otay Valley are pumping water upon their lands, and hence, on the theory of the defendant, not entitled to receive water from this system. I stated at the time of the hearing, and I am still of the same opinion after a very careful perusal of the authorities

cited by the attorneys for the defendant, that this question is wholly immaterial to the issues here involved on the theory advanced by the complainants. I shall have more to say with reference to this when I consider the law of the case. It is also in evidence that the complainants and their predecessors in the Otay Valley parted with their riparian rights either by gift or sale to the defendant, Southern California Mountain Water Company, and the attorney for the complainants states (Transcript, page 364) "That these complainants are not claiming the water on the ground of riparian rights, but solely on the ground of the appropriation of the water." It is asserted (Transcript, Application 169, page 52 *et seq.*) that the owners of land in the Otay Valley were induced to part with their riparian rights below these dams on a promise that they might receive water when it was impounded. The lower Otay dam was constructed practically fifteen years ago, and any rights that were parted with became divested at or near that time. Furthermore, only four or five of the owners of land who were owners at the time the dam was constructed are now owners of land below this dam (Transcript, Application No. 169, page 65). What the effect is of a fraud such as is alleged to have been worked by this company in getting riparian lands on the promise of delivery of water thereto, and then refusing to deliver the water after the title had passed will be discussed when I am considering the law of the case. It is also in evidence that the company has secured all of the riparian rights on the two stream systems from which it takes water except the lands on the Tia Juana River below the Mexican line.

On the 12th day of September, 1911, the board of supervisors of San Diego County passed an ordinance fixing the water rates for the Southern California Mountain Water Company, defendant herein, and in that ordinance it is provided that "for irrigating acre property the rate shall be twenty cents per thousand gallons."

On September 16, 1911, Complainant Palmer in writing demanded water upon  $2\frac{1}{2}$  acres on the east 10 acres of the northwest quarter of the northwest quarter of section 22, township 18. On October 5th the company, through its secretary, A. H. Keyser, responded to Palmer, returning his check and asking for a \$5.00 deposit to cover meter, and also that Palmer arrange for the putting in of the pipe necessary to take the water to his land; and further stating that when Palmer was ready to make a "deposit sufficient to cover these expenses that the company would cheerfully give you the necessary connection." On November 14, 1911, General Superintendent B. M. Warner of the defendant company wrote Palmer to the effect that it would cost approximately \$2,200 for a four-inch pipe or \$3,800 for a six-inch pipe to his land. On November 18, 1911, Mr. Palmer again wrote the company protesting against their demand that he pay for the extension, and there-

after on December 18, 1911, H. L. Titus, attorney for the company, replied to Mr. Palmer to the effect that the company would require the payment by him for the extension. In these letters the company does not make the same objection against the delivery of water which is now made, namely, that it already has devoted its water to beneficial purposes elsewhere. It is also in evidence, however, that the company in response to an application of the Otay Water League for water upon lands owned by its members denied the application on the ground that "it had no water for irrigation and never expected to have any."

With this preliminary view of the facts we can now define the issues and the position of the respective parties. The complainants urge that the notices of appropriation setting out the places of designated use of appropriated water are controlling as to the rights of the parties to water and give a vested right to owners of land and residents within the places of designated use to water and that, as between those within the places of designated use, there is no priority. In short, the position of the complainants is that the word "class" as used in the decisions when referring to the beneficiaries of a public use is territorial, and when used in connection with a water company in this State refers to those within the limits prescribed in the places of designated use in the notices of appropriation. The position of the defendant and intervenor is that even between the patrons of a public utility water company there may be priorities dependent upon the character of the use and the purposes to which the water is devoted. Their position is that, inasmuch as the water appropriated is appropriated both for domestic use and irrigation, that the consumers under these two uses constitute separate classes and those within the domestic use class have preference and priority over those within the irrigation class. There is also an implied assertion that the rule "First in time, first in right," applies as between the patrons of a public utility water company. There are several minor questions such as the effect upon any right which the complainants may have of alternative source of supply, such as wells upon their own land. But the main questions raised by the parties herein are:

*First*—Does the same preference as between the users of water for domestic purposes and users of water for other purposes exist where both classes are within the places of designated use of a public service water company as admittedly exists between owners of riparian lands who desire to use water for these different purposes?

*Second*—Do the places of designated use set out in the notices of appropriation give a vested right to all parties within such limits to the use of water, regardless of the character of the use or the order of the taking?

So far as my research goes, the exact questions in issue here have

never been decided in any state. It is well established that where riparian proprietors are involved, domestic uses of water are preferred to uses for irrigation.

*Alta Land Company vs. Hancock*, 85 Cal. 220;

*Smith vs. Corbett*, 116 Cal. 587;

*Lux vs. Haggin*, 69 Cal. 255;

*Duckworth vs. Watsonville*, 150 Cal. 520.

It is also well established in this State, contrary to the doctrine in most of the other western states, that in the case of a public service water company at least as between consumers of the same class there is no priority and in times of shortage the supply of water must be ratably apportioned.

*Leavitt vs. Lassen Irrigation Company*, 157 Cal. 82;

*Crow vs. San Joaquin Irrigation Company*, 130 Cal. 309.

This narrows the scope of the main inquiry to two questions:

*First*—Does the same rule or priority between uses which applies to riparian owners apply to consumers of water from the system of a public service company?

*Second*—What establishes one's status as a consumer under the system of a public service water company; how does he enter the class for whose benefit the public trust has been created? (*Price vs. Riverside L. & I. Co.*, 56 Cal. 431.)

The questions then to determine are:

*First*—On the state of facts existing in this case, are the complainants now in the class for whose benefit the public trust has been created?

*Second*—If they are not in such class, is it possible for them to enter it?

*Third*—If the complainants are found to be in the class for whose benefit the public trust has been created and it be found that all of the water which this defendant has in its control is now being devoted to a beneficial use either of the same or a different class than the one for which the complainants desire the water, will the company be required (a) to enforce a division of the water between these complainants and consumers of another class, and (b) to enforce a division of the water between all other users, regardless of class, and these complainants?

Before taking up these difficult questions, it may be well to dispose of some of the minor points raised.

Defendant urges strenuously that the fact that the complainants may have another source of supply available to them is material to the issues here involved. It was sought to be shown, and the evidence does show, that irrigation from pumped water is resorted to by the complainants and others in the Otay Valley to a considerable extent. I gave it as my opinion at the time of the taking of the testimony, and I am still of the opinion, that this question under the complainants' theory of the

case is absolutely immaterial. If the complainants, as they urge, have a vested right to the use of this water of which they can only be divested by condemnation proceedings, then the fact that they may be able to get water elsewhere certainly could not divest this vested right. The possibility of acquiring other property certainly does not divest the right to property already secured. Defendant cites several cases in support of its position, none of which are at all applicable. In the case of *St. Louis I. M. & S. Railway Company vs. State* (111 Pac. 396), it was merely held that the need for added facilities had not been shown, and the same may be said of the other cases cited by the counsel for defendant. If the position of the complainants here is correct, we do not have to consider the question of their being denied adequate facilities, but their being denied any facilities at all. In other words, in the depot case cited the patrons of the railroad already had service, and the court held that it had not been shown that this service needed improvement, but certainly when an utter failure to furnish service or accord a privilege to which one is entitled is shown, that showing is sufficient, and that is the admitted state of facts in this case. If the shippers in Oklahoma desiring to have their goods transported or desiring to go on a journey upon the railroad in question had shown that the railroad gave them no opportunity either to ship freight or to ride upon their trains it would not be necessary in addition thereto to show that there was need for such service. The utter denial of a right to which one is entitled certainly is a sufficient showing to justify any tribunal in exerting whatsoever authority it has to restore the injured party to the right of which he has been deprived. Therefore, on the theory of the complainants that they have a vested right to the use of this water it certainly is only necessary for them to show that they are not being accorded an opportunity to use it in order to entitle them to relief.

Before applying ourselves to the specific propositions of law applicable to this case it will be well to consider some of the general principles involved in the delivery of water by a corporation such as the defendant herein, that has appropriated water for sale, rental or distribution.

Much of the confusion which is found in the irrigation law of this State is due, in my opinion, to a failure on the part of those interpreting the law to understand certain fundamental distinctions between water devoted to private purposes and water devoted to public uses. Article XIV, sections 1 and 2, of the constitution deal not with the appropriation of water but with the power of the State to regulate agencies impressed with a public use. Those sections of the constitution deal entirely and solely with water, or more properly the use of water appropriated at the time the constitution was adopted or thereafter appropriated "for sale, rental or distribution," and it has been held

and is the settled doctrine of this State, that the power of the State to regulate such companies is entirely independent of the method of acquisition by them of water. *Merrill vs. Southside Irrigation Company*, 112 Cal. 427. It matters not whether the person or corporation selling water to the public appropriates it (and here I use 'appropriates' in an entirely different sense from that in which it is used in the case just cited) from the public waters of the State, or the United States; bores wells on private lands and pumps the water into ditches; purchases all the riparian rights in a stream and diverts the water by reason of riparian ownership of lands and the lack of any one who has the legal right to complain; or takes it from the sewers of a city. In every case the constitutional provision applies and the devotion of the water to the public purposes of sale, rental or distribution impresses the agency with the character which subjects it to regulation by the State. Sections 1410 to 1422, inclusive, of the Civil Code deal with another aspect of the water question, namely, the method of acquiring rights to unappropriated water. The agency desiring to take water, the right to the use of which has not yet been acquired by other agencies, has prescribed for it in these sections one method of acquiring the right, and this method is the same whether the agency desires to divert the water and put it upon private lands owned by itself or devote it to the public uses of sale, rental or distribution to the public or some part thereof. It has always been difficult for me to understand how such almost hopeless confusion could have been the result of these plain provisions of the constitution and the statutes, provisions so utterly unrelated; but we find law writers and courts saying that the waters of the State belong to the public (as they do by the constitutional provisions in some other western states) by reason of the two sections of article XIV of the constitution, which do not remotely bear upon the subject and only make the agency which has by any means lawfully acquired the right to be in control of a quantity of water subject to regulation when such agency sells, rents or distributes such water to the public or a portion thereof. The reasons for the sections of the Civil Code referred to, and the need therefor, can be readily seen. An agency desiring to supply water to non-riparian lands not owned by such agency could do so even as far back as when mining was the principal industry of this State, by getting the water devoted to the use for which it was desired ahead of anybody else. But when agriculture became largely dependent upon irrigation and large enterprises began to be conceived, it was taking too great a risk for any one to make large outlays of money when the right to use the water was dependent upon the first actual application of the same to a useful purpose. Hence the sections of the Code which establish the doctrine of relation, but do not at all change the rule which had therefore

existed and which now exists that the validity of the appropriation does not depend upon following the statute, but the actual application of the water to a beneficial use.

*Cardoza vs. Calkins*, 117 Cal. 106;

*Wells vs. Mantcs*, 99 Cal. 583;

*Burrows vs. Burrows*, 82 Cal. 564;

*Necochca vs. Curtis*, 80 Cal. 397.

Article XIV of the constitution merely makes certain agencies subject to regulation. The manner of regulation is that which shall be prescribed by law. The legislature thereafter passed certain statutes prescribing the method and extent of regulation. (Stats. 1885, p. 95, Public Utilities Act, Stats. 1911, p. 18, Extra Session.) Except as restricted by the constitution the legislature may prescribe whatever regulation it sees fit, but legislation pursuant to said constitutional provision could not properly deal with the method of acquisition of the water by the agencies therein made subject to regulation, the public use and the power to regulate attaching as a result of the devotion of the water to purposes of sale, rental and distribution, and having no reference whatsoever to anything else. The sections of the Civil Code on the other hand (1410 to 1422) dealing, as they do, entirely with methods of *acquisition* of water and not its *distribution*, are founded on entirely different fundamental powers of the State and have no more effect upon the agencies dealt with in article XIV of the constitution than they do upon railroads or gas corporations, except as they may or may not be involved in the acquisition of a supply of water which may or may not be used in a way which subjects the possessor to regulation prescribed in the article of the constitution. In short, the law dealing with acquiring rights to water by individuals or corporation is not concerned in the least with what such persons or corporations do with such water, while the law dealing with the public distribution of water and the agencies engaged therein is equally disinterested in and oblivious to the subject of acquisition of water.

The sections of the Civil Code are only applicable and only effective for the purposes of applying the doctrine of relation, and only relate to those persons and corporations who are reducing unappropriated water to possession and those who desire to reduce unappropriated water to possession, may do so as lawfully and with equal effect, as has already been pointed out, without following the statutes as by doing so. It is, therefore, apparent that every public utility water company in this State subject to regulation under the provisions of article XIV of the constitution could have acquired its water without following the sections of the Civil Code and so without having designated any place of intended use, but as to each of these there must be a

"class" for which the public use is created, which class is certainly not created by prescribing the places of designated use, for none have been prescribed, and to "class" as applied to such corporations the decisions of the Supreme Court are equally applicable. We evidently then must look elsewhere for a definition of "class" than the territorial one herein urged by complainants.

The provisions of the constitution and the sections of the code here considered being rightly understood and read in connection with the decisions to which I have already given a reference, which hold that a compliance with the statute is not necessary to secure the right, it readily appears that there may be many public service water companies with water lawfully in their possession for sale, rental and distribution that do not, and are not required, to state any places of intended use. Take the water company which develops water from underground sources upon its own land. It may, of course, use this water upon its own land or it may lawfully take it to the land of another and sell it, but so soon as it sells it, it becomes, as to such sale, subject to the "regulation and control of the State in the manner to be prescribed by law." So long as such a water company serves merely itself there is no need nor authority for regulation because there can be no conflict, but as soon as there are two involved—and always where two are involved—there will arise cases where the authority of government must determine disputes. Hence the provision of the constitution wisely imposes upon water companies the necessity of governmental restraint where such water companies perform services for others for compensation. A water company may also purchase all the riparian rights to a stream and hence, by reason of the fact that there are no riparian owners with legal ability to restrain the diversion of the water of such stream except the water company itself that has purchased the riparian rights, the protection of the doctrine of relation is not necessary because, under the decisions as they now stand, such a company as a riparian owner could restrain the diversion of the water by any one other than itself and by such means protect itself until it shall have taken the water to the place where it is desired to use it. While the established rule is that as between riparian proprietors one may not take the water to non-riparian land, yet, where there is but one riparian proprietor to an entire stream, the rule becomes inapplicable.

I am plainly of the opinion that the designation by the appropriator of places of designated use in compliance with the statute is only necessary in the case of the taker of water to which there are no rights except those of the public, and that, even when such taker of water designates places of intended use, such designation confers no vested rights upon any one. If it did, the failure on the part of this agency diligently to prosecute its enterprise would divest rights of the owners



of the land within the places of designated use without any fault whatsoever on the part of such owners, and we would have the peculiar situation wherein the self-constituted agent not appointed by the person whose rights are now vested under this theory could divest such rights without the fault of the owner thereof, by failing to prosecute his enterprise with diligence. The mere fact that this point has never been decided in this State would seem to indicate that it has not heretofore been deemed very important. If the mere description in the notice of appropriation of a man's land gives virtue to a vested right upon that land, then the man owning land entirely without the flow of the system, thousands of feet up the mountainside, would, by the mere inclusion, either through mistake or design, of such land in the notice of appropriation, become vested with a right to water where water cannot be placed. Or, as in this case, if this rule is good, the mere description of lands much in excess of the ability of the system to serve would make it necessary, as is urged here, that the water be spread over the entire tract to the benefit of none, thus completely destroying the beneficial use which, if the water be taken from unappropriated waters, alone gives validity to the right to it. Under this doctrine, if the Southern California Mountain Water Company, in its notices of appropriation, had designated the entire State of California—both cities and agricultural districts—then it would be necessary, on demand, to spread out the water over the entire State. Such a doctrine I consider intolerable and certainly would not advise this Commission to accept the same except in the face of absolutely controlling decisions of the courts, and, as I have said, no such decisions exist and, therefore, I certainly recommend the rejection of any such doctrine. The complainants have strenuously and at length, and very ably and plausibly, sought to apply this doctrine from decisions in this State. In order to do justice to the very able brief filed by the complainants, I shall review the decisions brought to our attention therein on this point. *Price vs. Riverside* (56 Cal. 430) is not authority for this doctrine. The inclusion of the language to “if water it has” indicates plainly that there are cases wherein, even under the old incorporation act, there considered, the places set out in the articles of incorporation may not, under all circumstances, be accorded water. *Hildreth vs. Montecito Creek Water Company* (139 Cal. 22) was a case decided on a question of pleading, but the court took occasion there to discuss certain principles but no question of places of intended use was involved. In that case, in passing, it is well to remark, that there the court held that “in cases of a public use the beneficiaries do not possess rights that are in the nature of private property.” I am aware that it was therein held that “the right of an individual to the public use of water is in the nature of a public right possessed by reason of his status as a person of the

class for whose benefit the water is appropriated or dedicated. All who enter the class may demand the use of water, regardless of whether they have previously enjoyed it or not." But, as I have said, this case did not assume to determine what fixed the status and entitled a person to the right and to say that the notices of appropriation establish this status is begging the question. In this *Hildreth* case no question of the notices of appropriation was involved and, as a matter of fact, it can be gathered from a reading of the case that somebody wanted the water but had not theretofore received it, and on the facts stated therein the court held this person was not entitled thereto. The case of *Leavitt vs. Lassen Irrigation Company* (157 Cal. 82) likewise has no application to the facts considered here. That case is authority for the principle that there is no priority between users of water entitled to the use, but here, again, there is no determination of *who* is entitled to the use. As a matter of fact, I have always thought, from a considerable amount of puzzling over the question of priority between consumers of water under a public service water company and the necessity of limiting the users to those who may be beneficially served under ordinary circumstances, that in the *Leavitt* case the Supreme Court had this same trouble in mind when it said (page 92): "The foregoing statement that a water company or person in charge of water devoted to public use cannot confer a preferential right upon one consumer over another is not to be understood as denying the right of such company or person in possession of a *limited amount* of water to devote that amount to the irrigation of a given area of land. We are not to be understood as saying that the company may not fix the limits of this territory and lawfully agree to supply its waters first to the lands within that territory and to supply to outsiders only such surplus as there may be after the needs of the original territory for which the water was procured are satisfied. This would not be in derogation of the public trust, but would be a mere regulation of use in the performance of the trust."

Complainants urge that this limitation here discussed applies to the time of filing the notices of appropriation. I do not believe it is necessary to construe it so, since the very need which caused the court to make this reservation is brought about by the fact that usually water companies map out territory larger than their supply can possibly serve. The use of the language "limited amount of water" indicates that this must have been in the mind of the court. I believe there is greater reason for construing this language the way I do than in accordance with the contention of complainants, and if the court means what I believe it does, it has suggested a way of remedying what may otherwise be a very great evil. I am aware that there is some force in the objection of complainants' attorney that this gives room for favoritism on the part of the company, but the same favoritism could

be indulged in prescribing the places of intended use in the notices of appropriation. These companies, however, are subject to control by the State, and so long as such is the case I believe the matter can be controlled in another way, and I shall discuss this method in another portion of this decision. Furthermore, what has already been said concerning the different functions of article XIV of the constitution and sections 1410 to 1422 of the Civil Code is equally applicable to the language of the court in this case. Here the court was dealing with the "class" and was not concerned with what *fixed one's status* as a member of the class. From our conclusion as to the lack of relation between the laws of *acquisition* and *disposition* of water it follows that we must look elsewhere than the places of designated use to determine what constitutes one a member of the class for which the use is created which is being here discussed by the court, and hence the *Leavitt* case, and the reasoning therein, appears inapplicable to the question before us.

It is unfortunate for complainants' contention that they have cited *Thayer vs. California Development Company*. To begin with the court did not have before it many of the material facts which tend to fix the status of the California Development Company, and I most thoroughly believe and ardently hope that when all the facts are presented to the court it will find that with these added facts it must determine the California Development Company a public utility. The only justification for regulation of water companies is that they occupy a relationship to their patrons which makes it necessary for the State to intervene between such patrons and such water companies. All of the cases to which the court there refers were cases where there was but one party, namely, the user of the water. To be sure there were two aspects of this party, one in its corporate capacity where it diverted the water, and the other where in its component parts its stockholders and masters of the corporation used the water. Every case cited by the Supreme Court in the *Thayer* case as authority for its decision on this point was a case where water was delivered by the users organized as a corporation to the users as stockholders, and there is no necessity for intermediation between a man and himself; but in the California Development Company there are two parties, the California Development Company, which delivers the water for compensation to the users in their corporate capacity as a mutual company, which in turn distributes it to its stockholders. I am aware that certain matters in the *Thayer* case are not related to the matters before us, but the complainants have so strongly relied upon this case that I deemed a brief outline necessary. Unfortunately, however, for the contention here raised by the complainants that the notices of appropriation give a vested right to the water, the facts in the *Thayer* case were that *the lady who was seeking the water*

upon her land and who was denied it under this decision had land which was covered in the notices of appropriation of the California Development Company on every side of which there were others receiving water. In other words, the *Thayer* case with which, I am frank to say, presumptuous as it may seem, I do not agree, but which of course I have to accept on the facts therein presented until the law is changed, directly decides against the contention of the complainants herein.

The case of *Miller vs. Bay Cities Water Company*, 157 Cal. 256, in my opinion does not have any bearing upon the questions here in issue. There, contrary to the contention of complainant, the court specifically said (at page 285), "It is insisted, too, that the right of this complainant to the waters percolating through his land is a vested right and that the right to have the flow of the flood waters contribute to this percolating supply is equally a vested right which the court has no authority to permit to be disturbed or of which the complainant may be deprived except under condemnation proceedings and upon payment therefor." The court specifically declined to pass upon this point, and I submit that the quotation from complainants' brief assuming to state what the decision of the court was must have been inserted through error for it has left off the beginning of the sentence, "It is insisted too that," and reads as follows:

"The right is a vested right which the court has no authority to permit to be disturbed or of which the plaintiff may be deprived except under condemnation proceedings and upon payment therefor."

To begin with the court in this connection was dealing with percolating waters, and secondly, as will be seen from a reading of the case and the quotation which I have given, specifically declined to pass upon the question.

I have no desire to criticize either the attorney for the complainants or the attorney for the defendant, but they have in several instances cited cases as authority for a proposition which it seems to me a careful perusal of the case in question would have caused them to see are not authority for the proposition advanced. The city attorney has been much more careful in his citations. If greater care were exercised by attorneys in citing cases the work of those who are required to review the cases cited would be much lighter.

I am now prepared to answer the first question and to say that the places of designated use required to be set out in the notices of appropriation do not vest rights to any one included within the territory described and only apply to the doctrine of relation. It may be asked why the legislature enacted a section requiring the setting out in notices of appropriation of places of intended use. The reason which impels the legislature to pass a statute is not always plain, but a very good

reason for such provision as to a private appropriator would be to show that he had a place to put the water and he was not merely trying to tie it up and as to a public appropriator, that the amount of water which he was trying to reserve was not in excess of the needs of the people whom he could serve. I merely give this as my opinion as to the general reason for enacting in section 1415 of the Civil Code the provision which requires that the notice of appropriation shall state "the place of intended use."

A like reason would seem to be responsible for requiring in the same section a statement as to the purposes for which the water is claimed, the amount of the water claimed and the means of diversion. In short, the section seems merely to be designed to show the bona fides of the prospective appropriator.

The second question we desired to determine was if the complainants are not in the class for which the public use is created, is it possible for them to enter this class. What qualifications are necessary to constitute one a member of the class for which a public use of water is created has never been determined by the courts of our State, nor is it yet the subject of specific statutory treatment. That it may be dealt with by the legislature seems undoubted. These agencies distributing water for compensation are subject to "regulation and control of the state in the manner to be prescribed by law."

This regulation certainly can be adequate for the purposes which caused its enactment. It is only the peculiar nature of any business which subjects it to regulation and that regulation should go just as far, but no further, than the needs which justify it. Having this principle in mind, we realize that the character of the agency to be regulated determines the character and extent of the regulation necessary. A charge of bird-shot, or a stick in the hand of a small boy, may put a striking rattlesnake out of business, while only the most efficient high power rifle can stop the charge of the lion; yet the necessity in one case may be no greater than in the other.

All public utilities may be regulated and they should be regulated in those respects wherein they need regulation. Rates, service and securities of all utilities may be certainly regulated, but none of these need be regulated in the same way as to different classes of utilities. Particularly is this true of service. Certainly different rules should apply to the regulation of the service of a railroad than are properly applicable to the regulation of the service of a water company. As to each, the governmental authority empowers the regulation which prevents acts which will tend to impair the service. The taking on of additional consumers by a water company when it has all of the water in its possession already put to a beneficial use most surely would impair its service and could and should be prevented. This principle can be

readily perceived if we have in mind the distinction between a public utility that performs a service—such as a railroad—and one that distributes a commodity, such as a gas or water company. Particularly is this distinction marked in a water company in an arid or semi-arid region. Such agencies are necessarily in possession of a limited supply of their commodity and when the supply is exhausted no more may be had.

Mr. Weil, in his work on Water Rights in the Western States—third edition, paragraph 1281—takes this view of the *Leavitt* case. He says “Reasonable classification of the public may be made. One instance of this is where the natural situation of the facilities demands that service be limited to specific classes of the public. Where a portion of the company’s supply is consumed within a fixed area and affords adequate facilities for that only it may restrict that portion of its supply to lands so situated.”

I do not think that I would be stating a revolutionary or an unsound principle if I should say that under certain circumstances the State may deny a man the permanent use of water, from a particular supply even for domestic purposes. When San Diego County develops all the water possible and users are on hand for this supply and are using it, San Diego County has reached the limit of its development, and no more permanent residents may be permitted to come into San Diego County, and to say that the government cannot control such a situation is an admission that government may not be adequate to the needs for government and I am not prepared to admit this. The man who would be denied water for domestic purposes under the circumstances imagined would not be denied the equal right which the California rule gives to all consumers from a public service water company without regard to priority in the beginning of the use. He would only be denied the right to enter the class to whose uses all of the water in San Diego County had theretofore been devoted.

On this principle we settle also the question of priorities when applied to a public water agency. We may still retain the principle prevailing in this state which I have just announced that as between consumers of such public utilities there are no priorities or preferences—*Leavitt* vs. *Lassen*, *supra*—by the simple and rational method of restricting the class to which the water is to be delivered within the limits of the reasonable ability of the company to serve.

There remains to be determined wherein the power to admit into the class up to the limit of the supply resides. The Supreme Court in the *Leavitt* case has said that the company may restrict its boundaries and even if the position of the complainants were correct, the limitations at the time of the appropriation would be a recognition of this power. This power of limitation given to the company that does not

exist with reference to common carriers is warranted only by the public necessity therefor and in confining the agencies entitled so to limit their consumers to water companies having a limited amount of water, the court certainly recognizes that the public necessity should require this limitation. If the public necessity requires it, then, on the failure of the company to respond to this public necessity, the State certainly can require such response through governmental restraint or compulsion.

I believe that we cannot escape the conclusion that the State has the power to put in the hand of some governmental agent the power to determine the "class" which has been discussed in the decisions we have been considering.

Admitting that the State has this power, has the legislature imposed it upon any public authority, and how shall it be exercised? Section 126 of the Public Utilities Act provides, "Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable." Here there is imposed upon all public utilities, and this company is one, substantive duties which in my view comprehend the limitation of the supply of water and the right to take on more consumers after a company has reached the limit of its supply. In performing these substantive duties what should be the attitude of a water company when applications are made to it on behalf of proposed consumers to extend its facilities and afford a supply of water to such applicants, that is, to admit the applicant into the class of a consumer which would thereafter entitle him to an equal treatment with all the other consumers regardless of the order of their becoming such? Evidently the interest of those who are already consumers and are already within the class should be considered. That should lead the utility to determine what is the average reasonable requirement of its present consumers, and how large a factor of safety should be maintained in their interest. If the interest of the present consumers would not prevent the granting of the application then considerations affecting the company should be indulged. Is the prospective consumer in such a condition, with reference to the company's facilities, to make it reasonable to extend such facilities to such consumer? Evidently if the applicant is not within the flow of the system his request could not be granted, or if he is within the flow of the system and situated remotely from the facilities of the utility so that the expense attendant upon his admission to the class is too large to warrant the expenditure therefor, there might be cases when the prospective consumer could be required to bring his land into connection with the facilities of the company, and this doctrine is so well established that I do not deem it necessary to cite cases, but if it is reasonable to

extend the facilities to the applicant, and the other consumers do not suffer, then the utility should do so, and the Public Utilities Act makes it its duty to do so. If the utility has a supply which the lawful needs of its present consumers and their "safety, health, comfort and convenience" requires and water in excess thereof, and it is reasonable to extend the facilities to the applicant, it should be done in every instance because it is the settled policy of the state that water should be put to use and not unreasonably held in reserve.

If the water company does not perform its substantive duty here imposed, and in every case where there is a dispute as to whether or not it is performing such duty, it becomes the duty of the public authority to intervene and determine the disputed question and require, if it is found that the duty is not already being performed, that the company take steps to perform the duty imposed by law. Section 30 of the Public Utilities Act provides that every public utility shall comply with any order made by the Commission in the exercise of its jurisdiction. Sections 31, 32, 33, 34, and particularly 35, of the Public Utilities Act give the Commission ample authority to require the taking on of new consumers or prevent such action by a water company if the public convenience and necessity will be served by such action on the part of the Commission.

Therefore, it would appear that the test for admission to the class which will thereafter be protected even to the ratable apportionment of the supply in times of scarcity, is the reasonableness of the request to be admitted based upon the facts in each particular case, and in the admission of new consumers by a water company it would be just as unjust, and just as much in conflict with the Public Utilities Act for it to discriminate by admitting one applicant and refuse to admit another similarly situated as it would be to violate any other of its substantive duties.

The question of the needs of a growing city is a very difficult one to handle and in my mind needs additional legislation. The matter is not of serious consequence in this case because of the fact that I am of the opinion and I shall find that the present supply of the Southern California Mountain Water Company is reasonably taxed, and that it should not admit these prospective consumers at the present time on the showing which has been made in this case. But whether or not the future needs of a growing city to which a water company is obligated to furnish water may justify it in keeping a supply in reserve, by reason of the anticipated growth of such city to the exclusion of other proposed users, otherwise qualified to be admitted to the class which the utility may be required to serve, is not clear. It would seem that here the discretion of those who have authority to decide should be



wisely exercised, but whether under this state of facts any discretion exists is a matter upon which I am not decided. Section 549 of the Civil Code provides: "All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof for family use so long as the supply remains, at reasonable rates and without discrimination of persons, upon proper demand therefor; and must furnish water to the extent of their means in case of fire or other great necessity free of charge." As I have already said, the policy of the State being against the reservation for the use of those not now ready to avail themselves of the supply, it would seem that the only warrant for storage beyond actual present needs is in the fact that in reality there is a need for a reserve for contingencies that may reasonably be expected to occur. It is plain that the fact that there is enough water in the reservoirs of the company furnishing a city to last for a week may not justify the conclusion that there is enough for the needs of the city, although before a week passes the reservoir may be refilled. The minimum, of course, must be from season of rainfall to season of rainfall in a semi-arid section such as the county of San Diego, but considering the history of that section I believe any reasonable man will say that one year's storage alone is absolutely inadequate. I believe every one will admit this. What the exact amount of water stored should be I am not prepared to say. The engineers for the defendant contend for seven years; I believe this is excessive, but I am equally clear that the amount which is now stored is not in excess of the reasonable needs which presently exist, and such being the case I believe that the complainants can not be admitted into the class at the present time, nor can any other consumers outside the cities in question for domestic purposes purely be admitted without jeopardy and injury to the present consumers under this system. By saying this I do not hold that there may not be a time when all of these lands may be watered. This will largely be determined, however, by the growth of the cities now receiving water and the judicial or legislative determination of the question as to the right of a private corporation or the city, itself, that has purchased the property of such private corporation, to reserve a supply to the exclusion of those now ready and willing to use it for the use of future inhabitants of a growing city, and the further determination of the maximum amount of water which may be developed from this system.

In answering the second question and determining how one may become a member of the class for which a public use of water is created and discussing the condition of the supply we necessarily reach the conclusion that the complainants can not at the present be admitted to this class. This makes the answer to the third question unnecessary, and we have been required to deal with enough difficult questions in

this case without attempting to determine whether or not there should be priority between different kinds of classes of consumers unless there is necessity therefor. I have carefully gone over the decisions submitted on this question in the briefs, but do not believe they settle the question, and I do not consider it necessary to review them here. It is sufficient to say that substantially the entire class now receiving water under this system is a domestic use class and that any extensions that are made to new users should be limited to domestic users, and those only within the immediate territory now being served. It does not become necessary to pass upon this question, however, because it is not before the Commission except as raised by the parties, and as between the parties the case can be decided without determining this question.

Incidentally my view of the case makes the complainants' admission that 40,000 other acres of land are in the same condition as the land of these complainants of no force because I do not think such is the case by reason of the fact that we have rejected the places of designated use as imposing the obligation upon the utility. Likewise, under my theory of the case the fact that a prospective consumer has another supply does become material and is one of the facts which could and should be taken into consideration in determining the reasonableness of the application to be served by the public utility company.

It is likewise unnecessary to consider the question of fraud raised by complainants. This is certainly a question that under the facts of this case could only be determined by a court, and it is unnecessary for me to call to the attention of the very able attorney for the complainants the fact that his right to raise such a question must be asserted within a reasonable time after the discovery of such fraud.

The most serious showing against the company made by the complainants is that which results from the correspondence between Mr. Palmer and the officers of the company, and if it were not for the fact, as I have already determined, that the rights of the present consumers who are the members of the class to whose uses the water is dedicated, are more important than the rights of the company, I believe that this transaction would give Mr. Palmer individually legal right to prevail against the company. Neither this nor any other agency has a right to play fast and loose with members of the public or public authority. The great concern of the company then seemed to have been to get payment for its investment in extensions which, as I have said, may or may not have been a reasonable position. Its desire herein, as urged upon this Commission, is to protect its present consumers. My consideration, and the consideration of this Commission, is for the present consumers. I do not mean to be understood as saying that the company should not be dealt with justly, but we would have a right to assume that the company's position in 1911 was the position

upon which it would be willing to be judged, and were it not for the rights of the consumers it would be my disposition, as far as this instance is concerned, to the extent of whatever authority this Commission may have in the premises, to accord this individual complainant relief.

I have no hesitancy in saying that it is with much regret that I find that under my view of the facts and the law it is impossible for any relief to be accorded to these complainants, but just as City Attorney Andrews says, the applicants in asserting their own rights have forgotten the rights of the city of San Diego. I would say rather of the users of water within the city of San Diego. I believe that Mr. Palmer, the attorney for the complainants, deserved great praise for the tremendous amount of industry which he has devoted to his clients, and while it is of course outside the case, I do not believe it is just or proper for him to be criticised or abused for the position which he has taken. But I am not interested in the assertion on the part of either the complainants or the defendant herein that the other side is selfish and unreasonable. Indulging in such pastime may be pleasant for those engaged therein, but I believe it is hardly proper before any tribunal. Of course, it is the duty of this Commission, as well as every one in authority, to protect the weak against the strong, but it may be that sometimes the strong is in the right. But in this case I do not consider that the issues are between the weak and the strong. The issues as I have considered them are between present users in the cities of San Diego and Coronado, both large and small, both important and unimportant, and prospective users in the Otay Valley. Of course it is the subject of sincere regret to all that there should be any lack of supply of water to make all of the valleys of this State productive, but we of course must limit ourselves to the facts, and the facts are that the water supply of a large section of this State is not adequate to irrigate and supply all the lands and necessarily some must be dry.

The suggestion, however, that the city of San Diego go to the San Diego River for its water is a suggestion for which I have absolutely no sympathy. This, as every one knows, would deprive whole communities of necessary water for irrigation and domestic use, and the doctrine that the city of San Diego now owns the water to the rim of the valley and may deprive the present users of water which they have been devoting to beneficial uses for years and their only available source of supply, is, I believe, unsound ethically, and I hope legally.

I submit the following order:

ORDER.

The complainants herein having filed their complaint against the defendant and the defendant having answered said complaint and the city of San Diego having asked and having been given leave to inter-

vene against said complainants, and a hearing having been held and the Commission being fully appraised in the premises and basing its findings and conclusions upon the findings and matters set out in the opinion hereto,

The Commission hereby finds as a fact that the public convenience and necessity would not be served by the granting of the application of the complainants;

*And it is hereby ordered* that the complaint be and the same is ordered dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of January, 1913.

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DECISION No. 419.

IN THE MATTER OF THE APPLICATION OF THE CALIFORNIA-MICHIGAN LAND AND WATER COMPANY FOR PERMISSION TO EXERCISE FRANCHISE AND FOR EXTENSIONS.

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Application No. 273.

*Decided January 23, 1913.*

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Amending clerical error in original order and permitting intervening company to charge the same rates as are proposed to be charged by applicant.

*B. J. Bradner*, for Applicants.

*Edwin C. Cribb*, for Cribb-Brodek Light and Water Company.

REPORT OF THE COMMISSION.

**AMENDED ORDER.**

LOVELAND, *Commissioner*.

Whereas the opinion and order in the above entitled application was regularly issued on the 15th day of January, 1913; and

Whereas a clerical error has been discovered in the fifth paragraph of said order, said clerical error appearing in the fifth and sixth lines of said fifth paragraph, a portion of said fifth and sixth lines reading "three and one fourth ( $3\frac{1}{4}$ ) cents per one hundred gallons" when it should have read "three and one fourth ( $3\frac{1}{4}$ ) cents per one hundred cubic feet";

Now, therefore, said fifth paragraph is hereby ordered corrected and is corrected to read as follows:

Provided, that said California-Michigan Land and Water Company shall supply water to the residents and users of said tract at the rate of not to exceed two dollars (\$2.00) per month for ten thousand (10,000) gallons (one thousand three hundred thirty-three and one third ( $1,333\frac{1}{3}$ ) cubic feet) and three and one fourth ( $3\frac{1}{4}$ ) cents per one hundred (100) cubic feet for all water used in excess of the ten thousand (10,000) gallons per month; and

Whereas the consumers of water of the Cribb-Brodek tract have expressed their satisfaction with the rates proposed by the California-Michigan Land and Water Company by entering into contracts at such rates; and

Whereas the Cribb-Brodek Light and Water Company has been charging said consumers a different rate, to wit: less for domestic purposes, but considerably more for the purposes of irrigation, but has now requested permission to charge the same rates; and

Whereas the Commission believes that said Cribb-Brodek Light and Water Company should have the privilege of charging the same rate as that proposed by the California-Michigan Land and Water Company and accepted as satisfactory by the water users,

Now, therefore, it is held that the Cribb-Brodek Light and Water Company should be permitted to charge the same rate, and the opinion and order in Application No. 273 is hereby supplemented;

*And it is ordered* that the said Cribb-Brodek Light and Water Company be permitted to charge rates not in excess of those proposed by the California-Michigan Land and Water Company.

The foregoing supplemental and amended opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of January, 1913.

## DECISION No. 420.

IN THE MATTER OF THE APPLICATION OF THE SOUTH ANTELOPE VALLEY IRRIGATION COMPANY TO SELL, AND THE PALMDALE WATER COMPANY TO PURCHASE, A CERTAIN WATER SYSTEM AND APPURTENANCES, SITUATED IN THE ANTELOPE VALLEY, IN LOS ANGELES COUNTY, CALIFORNIA.

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Application No. 319.

*Decided January 23, 1913.*

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Application by a water company to acquire the works and system of another water company. The vendee proposes to expend \$100,000 on the irrigation system acquired in addition to the purchase price, and it is expected that these funds will be realized from sale of stock to be made later. It is apparent that the scheme is a meritorious one, as it revives an irrigation project long dormant, and which should, upon being improved and operated, bring great benefit to lands now without water.

The contract of purchase is not approved, confirmed or recognized as binding against the power of the Commission to regulate and control both service and rates.

*Donald Barker*, for the Palmdale Water Company.

*W. C. Petchner*, for the South Antelope Valley Irrigation Company.

## REPORT OF THE COMMISSION.

*EDGERTON, Commissioner.*

This is an application for an order authorizing the South Antelope Valley Irrigation Company to sell and the Palmdale Water Company to purchase, a water system and appurtenances, situated in the Antelope Valley, Los Angeles County, California, for the price of \$75,000, and other considerations.

The South Antelope Valley Irrigation Company now owns about 10 miles of canal extending from Little Rock Creek to the reservoir near the town of Palmdale, in Los Angeles County, and about 15 miles of lateral and distributing ditches and water rights, real estate, etc., a description of all of which is set out in Exhibit A, attached to the application herein. This irrigation system was built about 1896 and thereafter operated until 1904, when operation ceased, and since then, and for the last eight years, it has been idle.

It is proposed that the Palmdale Water Company purchase this property for the sum of \$75,000, payable in installments, and other considerations. Among these considerations are: That the Palmdale Water Company has commenced and will continue to repair and

improve said water system so as to put the same in first-class condition for a continuous seasonal irrigation of at least 2,000 acres of land. Such repairs and betterments to cost not less than \$15,000.

The Palmdale Water Company is capitalized for \$200,000 of common stock, divided into 2,000 shares of the par value of \$100 each, none of which stock has been issued, except 5 shares thereof to qualify directors. It is proposed by this company to expend \$100,000 on this irrigation system, in addition to the purchase price, and it is expected that these funds will be realized from sale of stock to be made later. The corporation at present has no indebtedness other than that created by the contract of purchase, above referred to.

It is apparent that this scheme is a meritorious one, as it revives an irrigation project long dormant, and which should, upon being improved and operated, bring great benefit to lands now without water.

However, the contract, a copy of which is filed with this application and marked Exhibit A, contains stipulations limiting the Palmdale Water Company in certain respects with regard to the land which it will irrigate and purporting to attach to certain lands permanent water rights, and affirming contracts heretofore made by water users with the South Antelope Valley Irrigation Company in which the price to be paid for water is fixed, which this Commission should not approve, confirm, or recognize, as binding against the power of the Commission to regulate and control both service and rates of the Palmdale Water Company.

The contract above mentioned, provided that the properties constituting this water system shall be deeded to the Merchants' Bank and Trust Company of Los Angeles, as trustee, to be held until the purchase price payments are completed, when the property is to be deeded to the Palmdale Water Company. A copy of the declaration of trust by the trustee and which embodies the provisions of the contract above referred to has been filed and considered in this matter.

I recommend that the application be granted, and submit the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California for an order authorizing South Antelope Valley Irrigation Company to sell, and Palmdale Water Company to purchase, a certain water system and appurtenances, situated in the Antelope Valley, in Los Angeles County, California, and a hearing having been duly held, and it appearing to the Commission that public convenience and necessity will be served by the granting of said application,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the South Antelope Valley Irrigation Company to sell, and the Palmdale Water Company to purchase, that

certain irrigation system located in Antelope Valley, Los Angeles County, California, consisting of all reservoirs, ditches, pipe lines, flumes, water and water rights and all other property, as more fully set out in that certain contract marked Exhibit A, and attached to the application herein, reference to which said agreement is hereby made. The purchase price of said property shall be not to exceed \$75,000, and may be paid in the installments and under the conditions set out in the aforementioned contract.

This order shall not be construed as an approval, sanction or recognition of the validity of such parts of said contract as relate to service or rates for water furnished, or to be furnished, by the Palmdale Water Company.

This order shall not be construed as in any wise fixing or declaring the purchase price of \$75,000 to be the true value of the properties herein authorized to be conveyed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of January, 1913.

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DECISION No. 421.

IN THE MATTER OF THE APPLICATION OF VARIOUS  
PUBLIC UTILITIES FOR PERMISSION TO CHARGE LESS  
THAN PUBLISHED SCHEDULE OF RATES IN CERTAIN  
CLASSES OF CASES.

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Case No. 293.

*Decided January 24, 1913.*

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In so far as possible, there should be no concessions from the published rates of public utilities. If it is desired to make donations it would generally be preferable to make the donations in cash instead of in service. In this way a large number of inequalities and discriminations now existing would be removed and a higher morale established on the part of the public utilities. On the other hand, it is recognized that long standing conditions can not always be remedied at once. Accordingly, *held*, that the continuance for the present of concessions should be authorized in those few classes of cases which seem to the commission to have the most merit; such authority not to be construed as a suggestion that the utilities should grant deviations in such classes of cases, but the effect of the order will simply be to permit the utilities, if they so desire, to grant free or reduced rate services in said classes.



*Held*, That public utilities other than common carriers may, if they so desire, in addition to the classes of cases specified as applicable to them in section 17 of the Public Utilities Act (referring to telephone and telegraph companies), extend grants of free or reduced rate service to (1) Federal and State governments and the political subdivisions thereof, including the departments thereof, and public institutions; (2) fairs and other public expositions and celebrations; (3) charity as defined in the opinion; and (4) employees.

While the Commission is of the opinion that some of the contracts for free or reduced rate service heretofore made by public utilities and not included in said four classes of deviations should properly be allowed to continue, such as contracts for right of way heretofore entered into, and while the rate established by other contracts may well be regularly filed by the utility because of differences in conditions justifying a different classification and a different rate, as distinguished from a concession, the Commission is also of the opinion that many of the contracts hitherto established have been established through favoritism and discrimination and should not be permitted to stand as against the present policy of the State, as expressed in the Public Utilities Act, unless it is clear that they must stand for legal reasons.

Accordingly, ordered that, within three months, each public utility which has entered into contracts for free or reduced rate service shall file with the Commission a list of those contracts which the utility desires to continue, with such details, with reference to each class, that the Commission may intelligently act thereon.

*E. S. Pillsbury*, for the Pacific Telephone and Telegraph Company.  
*Guy C. Earl*, for Great Western Power Company and City Electric Company.

*H. H. Trowbridge*, for Southern California Edison Company.

#### REPORT OF THE COMMISSION.

ESHLEMAN, THELEN, and EDGERTON, *Commissioners*:

The opinion and order do not apply to regularly published rates, even if they be special rates varying from other rates because of differences in quantity, time of supply or similar conditions, but only to so-called "concessions." Throughout this opinion we shall use the words "concession" and "deviation" interchangeably to mean a charge which is not a published rate or filed as a rate, though it may be a percentage of a rate.

When the legislature passed the Public Utilities Act in December, 1911, it specified the classes of cases in which common carriers might deviate from their published schedules of rates, following largely in this respect the provisions of the Inter-state Commerce Act. With reference to public utilities other than common carriers, such as telephone and telegraph companies, gas and electric companies and water companies, the legislature provided in the first instance that there should be no deviations from published rates, but also provided that the Railroad Commission should have the power to specify the classes of cases which might constitute exceptions to this general rule. This action with reference to public utilities other than common carriers was doubtlessly taken for the purpose of enabling this Commission to examine the extent

to which such public utilities were granting concessions from their established rates and then to determine, after mature deliberation, the classes of cases in which it might be wise to authorize the continuance of such concessions. The will of the legislature in this respect is expressed in section 17*b* of the Public Utilities Act, reading as follows:

“Except as in this section otherwise provided, no public utility, shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; *provided*, that the commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.”

The Commission, not knowing the extent of the deviations, being convinced that in some classes of cases it might be desirable to authorize the continuance of deviations and desiring to make investigations before reaching a final conclusion, deemed it wise to authorize the utilities to maintain the *statu quo* if they so desired, until the Commission could have made a full and complete investigation into the entire subject. Accordingly, on March 7, 1912, the Commission made its General Order No. 15, which order, after referring to the provisions of sections 14(*b*) and 17(*b*) of the Public Utilities Act, provides as follows:

“Now therefore be it further ordered that the public utilities of this state, other than common carriers, present to this Commission, within thirty days from the time of service upon them of this order, applications for permission to charge less than the rates, tolls, rentals and charges specified or to be specified in their schedules as to such classes of cases in which such public utilities may desire to charge less than the rates, tolls, rentals and charges specified in such schedules. As to rates, tolls, rentals or charges which this Commission will have jurisdiction to establish after March 23, 1912, such public utilities may continue to charge such lesser rates, tolls, rentals and charges as they may now be charging, whether such rates, tolls, rentals or charges be set out in their schedules or are deviations therefrom, until the decision of this Commission upon such applications. This order shall not be construed to prevent such public utilities from continuing to charge such rates, tolls, rentals or charges as they may desire to charge in any city and county or incorporated city and town as to which this Commission has not the power to establish rates, tolls, rentals or charges, sub-

ject to the ordinances or other regulations of such city and county or incorporated city or town."

Acting under said general order, a number of utilities filed with this Commission formal applications for permission to continue deviations from established rates. These applications were as follows: Application No. 3, The Pacific Telephone and Telegraph Company; Application No. 80, Tuolumne County Electric Power and Light Company; Application No. 116, Great Western Power Company; and Application No. 117, City Electric Company.

In Application No. 3, the Pacific Telephone and Telegraph Company, after referring to the concessions which telephone and telegraph companies, under the provisions of section 17 of the Public Utilities Act, are authorized to make to their own employees and to other telephone and telegraph corporations and common carriers, represented that it had been making concessions in the following classes of cases, which the applicant desires to continue:

(a) Cities, towns, villages, counties, and their various offices and departments, including schoolhouses, fire departments, municipal council chambers, etc., as covered by municipal franchises, or by written agreements.

(b) Same as "a," but not covered by franchises or written agreements, but simply under a verbal understanding.

(c) Concessions to the Federal Government, when covered by written agreement.

(d) Concessions to corporations, companies, copartnerships and individuals in consideration of grants of right of way, pole space, contract privileges and reciprocal exchange of service, where covered by written agreement.

(e) Same as "d." Not covered by written agreement, but by verbal understanding.

The Tuolumne County Electric Power and Light Company applied for authority to depart from its fixed schedules for the sale of electricity in the following classes of cases:

(a) Employees—to be given free service.

(b) Churches and ministers—to be given reduced rates.

(c) Municipalities—to receive free service for fire departments.

(d) City of Sonora—to receive free service for city hall.

(e) Sonora Cornet Band—to receive free service.

(f) Charitable affairs, such as parties and balls—to receive free service on occasions.

(g) Sierra and San Francisco Power Company, from which applicant buys its electrical energy—to receive lights and power at cost for its office and employees.

(h) City of Sonora—to receive lights for street service at reduced rates.

The Great Western Power Company asked permission to extend to all persons employed by it and by the California Electric Generating Company and the City Electric Company, subsidiary companies, a rate of 2½ cents per kilowatt hour for electric current for light, heat and power for domestic use, so as to encourage the use by employees of electricity for appliances, so that the employees might use their homes as experimental stations, as it were, to demonstrate the use of electric current for domestic purposes. The application of the City Electric Company was to the same effect.

These applications were consolidated for hearing and merged into a proceeding, on the Commission's own initiative, into going into the entire question, to which proceeding Case No. 293 was assigned.

It appearing to the Commission on the hearing of these applications that it was not yet in possession of sufficient evidence to enable it to pass intelligently on the questions presented, the Commission, on September 5, 1912, made an order in Case No. 293 calling upon all public utilities other than common carriers to file with the Commission a statement containing a segregation into the different classes of cases in which a product or commodity was, on March 23, 1912, being furnished or supplied by such utility at less than its schedule rates, with the names of the persons or corporations receiving such lesser rates, arranged under appropriate classes, with such explanations as might be helpful to an understanding of the circumstances surrounding each case. Each utility was directed to specify the cases in which it desired to continue such deviations from published schedules. It was pointed out that the order did not refer to schedule rates varying from other schedule rates by reason of differences in time or amount of use of commodity or service, but rather to classes of cases, such as contracts for right of way, employees, charitable uses, educational purposes, the state or political subdivisions thereof, in which cases it has been more or less usual to grant such privileges and in which the compensation collected is not a schedule rate, though it may be some percentage thereof.

The order furthermore contained the following paragraph:

"The Commission particularly desires that each such utility write to the Commission giving fully its views on the general question of deviations from published rates from the point of view of public policy, with particular reference to the class or classes of cases as to which the utility may desire to continue to deviate."

In response to this order, the Commission has received replies from between 200 and 250 utilities in the State, other than common carriers. These replies show quite clearly the situation as it exists in California to-day. The information so received will be analyzed under the following general heads: (1) telephone and telegraph companies; (2) gas and electric companies; (3) water companies.

1. *Telephone and telegraph companies.*

Replies were received from forty-eight telephone and telegraph companies. Omitting for the moment The Pacific Telephone and Telegraph Company, and confining our attention to the remaining forty-seven companies which reported, it appears that of these companies, sixteen reported that no deviations were made and the remaining thirty-one reported that concessions were being made to between one and twenty individuals or corporations, classified in accordance with the Commission's order. The following table shows the classes of cases in which concessions are being made and the number of utilities making the concessions in each case:

| Class of concession.  | Number of utilities making concession. |
|---|--|
| 1. State, county and city governments, under franchises and otherwise, including public schools ..... | 16                                     |
| 2. Railroad offices .....   | 13                                     |
| 3. Churches and clergymen .....   | 12                                     |
| 4. Clubs and lodges .....   | 12                                     |
| 5. Newspapers .....   | 5                                      |
| 6. Federal government .....   | 4                                      |
| 7. Original subscribers .....   | 4                                      |
| 8. Rights of way .....  | 4                                      |
| 9. Charity, including Young Men's Christian Associations....  | 3                                      |
| 10. Doctors .....   | 2                                      |
| 11. Exchange with power company .....   | 1                                      |

In addition to these classes of cases, the telephone companies reported quite a number of concessions to persons who may probably be classed as favored persons and who do not fall within any of the above classes.

The Pacific Telephone and Telegraph Company filed a full report, showing the classes of cases and each deviation within the class in which the company, prior to April 1, 1912, was making concessions from its established rates. This report is divided into two portions, the first portion (being classes A to II, inclusive) being classes as to which concessions were voluntarily discontinued by the company on April 1, 1912, and the second class of cases being those from I to N, inclusive, being the cases in which the company desires to continue to make concessions. The concessions in classes A to II, inclusive, were withdrawn by the telephone company not as the result of any provision of the Public Utilities Act or of any order of this Commission, but because the telephone company for its own purposes and in accordance with its policy as established at that time, desired to cease giving concessions theretofore voluntarily made. The classes of cases as reported by the telephone company, together with the number of telephones involved in each class, are as follows:

## I.

*Discontinued April 1, 1912.*A. *Courtesy.*

This class includes University of California and instructors therein; post offices; newspapers; public libraries; chambers of commerce; cemeteries; hotels; boards of trade; public officials; University of the Pacific; state officials, including certain members of the legislature; clubs; large merchants; sanatoriums; hospitals; supervisors; charitable organizations; and a large number of individuals of whom most are prominent—totaling about 500 telephones.

|  |                 |
|--|-----------------|
| B. Orphan asylums -----  | 16 telephones   |
| C. Kindergartens -----   | 3 telephones    |
| D. Boys' and Girls' aid societies -----  | 9 telephones    |
| E. Fraternal organizations, including clubs, lodges, Young Men's Christian Associations, Young Women's Christian Associations, N. S. G. W., etc., about -----  | 215 telephones  |
| F. Churches,—totaling about -----  | 140 telephones  |
| G. Other charitable institutions, including convents, missions, Salvation Army, day nurseries, bible associations, hospitals, homes of various kinds, settlements, associated charities, humane societies, etc., about ----- | 200 telephones  |
| H. Clergymen, totaling about -----   | 1000 telephones |

## II.

*Still in Effect.*

|  |                |
|--|----------------|
| I. Rights of way, pole space, contract privileges, reciprocal exchange of service, covered by verbal understanding alone, etc., totaling about ----- | 190 telephones |
| J. United States Government -----  | 21 telephones  |
| K. Rights of way, pole space, contract privileges, reciprocal exchange of service, covered by written agreement, totaling about -----                | 74 telephones  |
| L. Cities, towns, counties and their various offices and departments, as covered by municipal franchises or written agreements, totaling about ----- | 500 telephones |
| M. Newspaper concessions, toll revenues, totaling -----  | 10 telephones  |
| N. Cities, towns, counties and their various offices and departments, under verbal agreements, about -----   | 340 telephones |

The total amount of revenue which The Pacific Telephone and Telegraph Company saved when it canceled the concessions heretofore given on classes A to H, inclusive, effective April 1, 1912, is as follows:

| Class.                                  | Monthly savings. | Annual savings. |
|---|------------------|-----------------|
| A. Courtesy -----                       | \$1,253 65       | \$15,043 80     |
| B. Orphan asylums -----                 | 47 78            | 573 36          |
| C. Kindergartens -----                  | 5 25             | 63 00           |
| D. Boys' and girls' aid societies ----- | 16 75            | 201 00          |
| E. Fraternal organizations -----        | 700 85           | 8,410 20        |
| F. Churches -----                       | 200 15           | 2,401 80        |
| G. Other charitable institutions -----  | 662 31           | 7,947 72        |
| H. Clergymen -----                      | 1,273 20         | 15,278 40       |
| Total -----                             | \$4,159 94       | \$49,919 28     |

It should be noted that the first concessions which The Pacific Telephone and Telegraph Company discontinued were largely those which it seems to us there is the best reason for allowing to stand, namely, those given for charitable purposes. The Commission having ruled herein that concessions for charitable purposes may be continued, the utilities should, in justice, make it very plain to those charities which have heretofore received concessions that it is not because of the Public Utilities Act or of any ruling of this Commission that these concessions must be withdrawn, but because of the voluntary desire of the utility in pursuance of its own policy.

We desire to comment briefly on the concessions which The Telephone Company desires to continue.

Item "I" in the list, consisting of concessions to corporations, companies, copartnerships and individuals, in consideration of grants of rights of way, pole space, contract privileges and reciprocal exchange of service, where not covered by written agreement, consists of some 190 telephones. Written agreements accompany the cases specified in Schedule K, being contracts for telephone service in consideration of grants of right of way, pole space and other privileges. It will be noted that a part of the telephone concessions granted to cities, towns, villages, counties and other political subdivisions of the State are covered by franchises and other written agreements and that the remaining concessions are under verbal understandings.

2. *Gas and electric companies.*

Sixty-one gas and electric companies filed reports with the Commission. Of this number, twenty-six reported that they had no deviations from their published rates. The other thirty-five reported deviations in the following classes of cases:

| Class of concession.                                       | Number of utilities making concession. |
|--|--|
| 1. Employees .....   | 20                                     |
| 2. State, county and city governments and departments..... | 16                                     |
| 3. Special contracts .....                                 | 13                                     |
| 4. Rights of way .....                                     | 10                                     |
| 5. Charity .....   | 7                                      |
| 6. Churches .....  | 6                                      |
| 7. Educational .....                                       | 2                                      |
| 8. Federal government .....                                | 2                                      |
| 9. Chambers of commerce .....                              | 2                                      |
| 10. Town theatre .....                                     | 1                                      |
| 11. Railroad .....   | 1                                      |

The above table simply shows the classes of deviations and the number of utilities which deviate as to each particular class. The table does not show the number of individual cases in each class of

deviation. In order to show this condition, we desire to refer to the report filed by the Pacific Gas and Electric Company, as follows:

| Class of deviation.   | Number.    | Percentage. |
|---|------------|-------------|
| A. Mixed service—power and electric together.....   | 69         | 10          |
| B. Long term contracts—establishing lower rate in consideration for long term contract.....             | 272        | 39 5-10     |
| C. High load factor or off-peak business.....   | 36         | 5 2-10      |
| D. Large consumption .....  | 57         | 8 3-10      |
| E. Competition—lower rates to compete with other utilities supplying like service.....                  | 90         | 13 1-10     |
| F. Reciprocal (discontinued) .....  | 2          | 3-10        |
| G. Part compensation for property or right of way acquired or leased .....                              | 23         | 3 3-10      |
| H. Educational .....  | 1          | 2-10        |
| I. State and county institutions .....  | 13         | 1 9-10      |
| J. Consumers acquired with property—in which cases rates have not been increased to regular schedules.. | 125        | 18 2-10     |
| <b>Total deviations</b> .....   | <b>688</b> | <b>100</b>  |

This company also gives reduced rate service to its employees. It did not file a list of these employees or of the charitable institutions to which it grants concessions.

It should be noted that certain of the cases referred to by the Pacific Gas and Electric Company are not so much deviations from published rates as special rates established because of special circumstances, such as consumption at a time when the demand for electricity is not so great or lesser rates because of greater quantities of consumption. These remarks do not apply to the long-term contracts, which constitute 39 5/10 per cent of this company's business, or to competitive rates, which constitute 13 1/10 per cent of the company's business.

### 3. Water companies.

One hundred and twenty-four water companies reported. Of this number, 60—being almost one half—reported that they have no deviations. The following table shows the classes of deviations and the number of corporations deviating in each class as to the remaining 64 companies:

| Class of deviations.                                      | Number of utilities deviating in each class. |
|---|--|
| 1. Counties, cities and other political subdivisions..... | 30   |
| 2. Special contracts .....                                | 26   |
| 3. Charity .....  | 16   |
| 4. Churches and clergymen .....                           | 13   |
| 5. Rights of way .....                                    | 9  |
| 6. Employees .....  | 9  |
| 7. Railroads .....  | 5  |
| 8. Old customers or persons not stockholders.....         | 4  |
| 9. Clubs .....  | 2  |
| 10. Federal government .....                              | 1  |



The report also shows water being furnished to a number of persons, including several city trustees, in addition to those mentioned above.

To show the condition as applied to one of the larger water companies, we desire to draw attention to the report of the Peoples Water Company which supplies water to Berkeley, Oakland and vicinity. This report shows the following deviations:

|   |     |
|---|-----|
| 1. Riparian or other water rights and rights of way under agree-<br>ments ----- | 118 |
| 2. Religious institutions -----   | 36  |
| 3. Employees -----  | 14  |
| 4. Charity—indigent persons -----   | 8   |
| 5. Charitable institutions -----  | 7   |
| 6. Sectarian educational institutions -----                                     | 7   |

A somewhat different condition is shown by the Mokelumne River Power and Water Company, which shows deviations as follows:

|                                  |    |
|----------------------------------|----|
| 1. Cemeteries -----              | 2  |
| 2. Fire Department -----         | -- |
| 3. Employees—all free -----      | -- |
| 4. Ministers -----               | 3  |
| 5. County watering troughs ----- | -- |
| 6. Ice company, 2/3 rate -----   | -- |

A further illustration showing a situation slightly different is that presented by the report of the Monterey County Water Works, which shows deviations as follows:

1. Custom House at Monterey.
2. Churches, 11.
3. Public libraries, 2.
4. Rights of way, 12.
5. Special contract, Pacific Improvement Company.

As heretofore noted, the Commission particularly requested the utilities to give their views fully on the general question of deviations from published rates from the point of view of public policy. Relatively, only a small number of utilities complied with the Commission's request in this respect. The replies received show a great divergence of views. Some utilities, particularly the smaller ones, expressed the view that there should be no deviations at all. One of these utilities states its conclusions as follows:

“The free list is the thief that robs and undermines any business.”

The sentiment against any deviations seems to be particularly strong among the water utilities, as to which almost fifty per cent make no deviations. On the other hand, some of the utilities, particularly the larger ones, believe that deviations should be permitted if they are confined strictly to a few designated classes. One of these utilities does not favor the grant of electricity or power for rights of way, preferring cash payments, but does favor reduced rates for employees

for experimental purposes and for charity and educational purposes. This utility believes that cities and counties should pay full rates, but that existing contracts should be honored. Another electric company believes that reduced rates for service should be given to employees to encourage the use of electric appliances in their homes, but is opposed to all other deviations. This utility believes that rights of way should be paid for in cash, that if it is desired to help charitable or religious organizations, the assistance should take the form of a cash donation, that concessions should not be made for educational purposes except in connection with research work along electrical lines and that a preferential rate to a city, while lessening the taxes on the entire community, is an unfair burden upon those members of the community who are consumers of the company. Another company is opposed to all deviations, except for charitable purposes and employees. One of the largest gas and electric companies in the State is opposed to all deviations. This company makes cash donations to three charities. The classes of deviations which were most largely included in the lists of those which the utilities thought should continue were employees and charitable purposes (including churches). The utilities were also generally of the opinion that deviations granted to municipalities under franchises should continue and many of them desired the privilege of granting free or reduced rate service to certain departments of the city governments, such as the fire department, public libraries and the public schools. Those telephone companies which are granting concessions to railroads with respect to telephones in railroad depots nearly all regard the arrangement as unjust, and were of the opinion that the railroads should pay full rates.

A similar divergence of views appears from the legislation of other states. Some states, such as Massachusetts, while authorizing deviations from the rates of common carriers in specified cases, do not authorize any deviations from the rates of public utilities other than common carriers.

Wisconsin does not seem to permit any deviations except that, under section 92 of the Public Utilities Act, public utilities may continue to furnish service on the terms specified in any existing contract executed prior to April 1, 1907.

Section 75 of the Public Service Commission Act of Ohio grants permission to all public utilities to grant free or reduced rate service to the United States Government and the state government or any political subdivision thereof, for charitable purposes, fairs or exhibitions and to any officer or employee of the utility. The Ohio Com-

mission is inclined to construe these exceptions strictly, as is shown by the following extract from a letter from that Commission:

"The Ohio Commission stands against the issuing of free or reduced rates to any person or class of persons, as a rule, in any community, and is inclined to give strict construction to the statute and to stand clearly upon the terms thereof."

On the other hand, a large number of states specify certain classes of cases in which public utilities are permitted to grant concessions from their published rates. Washington has gone so far as to work out a special set of cases for each class of such public utility and to incorporate these provisions into the Public Service Commission Act. This act provides that gas and electric companies may grant concessions to specified classes, that telephone and telegraph companies may grant concessions to other classes, and that water companies, wharfingers and warehousemen may grant concessions to still other classes.

The Virginia Corporation Commission is authorized to approve reduced rates for charitable institutions.

The Oklahoma Corporation Commission writes as follows:

"As to telephone, gas, electric and that class of public service this commission has ruled that they may give free service to the municipal officers, if such is provided in the franchise, or may do so by agreement. They may give reduced or free rates to churches, charitable or eleemosynary institutions and may give reduced or free rates to their employees, same being considered as a part of the salary paid the employees. We do not allow free service given for the use of grants of right of way. This could be greatly abused. We think it best for the company to pay for the right of way and charge for its service."

This Commission is of the opinion that, in so far as possible, there should be no concessions from the published rates of public utilities. We believe that if it is desired to make donations it would generally be preferable to make the donations in cash instead of in service. We believe that in this way a large number of inequalities and discriminations now existing would be removed and a higher morale established on the part of the public utilities. On the other hand, we recognize that long standing conditions cannot always be remedied at once. We have accordingly decided, under the authority conferred upon the Commission by the Public Utilities Act, to authorize for the present the continuance of concessions in those few classes of cases which seem to the Commission to have the most merit and, at the same time, to point out the way to the ultimate condition in which every person who receives service from a public utility pays for what he gets.

In permitting the utilities to continue deviations in the classes of cases specified in the order, we do not wish to be understood as

saying that the utilities should grant deviations in those classes of cases. The effect of this Commission's order will simply be to permit the utilities, if they so desire, to grant free or reduced rate service in those classes of cases. If any utility does not desire to deviate from its published rates, it is entirely within its right to refuse any deviation. However, if any utility does grant concessions to any of the four classes of persons authorized in the order, it will be expected to do so uniformly without discrimination between members of the class, under the same or similar conditions.

The authority to give free or reduced rate service to the Federal and State governments and political subdivisions thereof, including the departments thereof and public institutions, should be confined to granting such free or reduced rate service to the government or department or institution itself and not to an official or employee thereof. The practice of granting free or reduced rate service to trustees, supervisors, members of the legislature and other public officers, as individuals, should cease. It is one thing to grant a free telephone to the office of the city council and an entirely different matter to put such telephone into the home of a councilman.

The term "charity" will be used in its broad sense, as used in "In the matter of passes to clergymen and persons engaged in charitable work," 15 I. C. C. 45, in which case it is said at page 46:

"The courts have been consistently liberal in giving construction to the words 'charitable' and 'eleemosynary,' and we see no reason for being unduly narrow in interpreting these words as found in the act. A charitable institution is one which is administered in the public interest and in which the element of private gain is wanting. This definition is broad enough to include hospitals, almshouses, orphanages, asylums and minor institutions. This enumeration is not intended to be exclusive—it is only representative. It is important to note that such an institution does not necessarily lose its charitable character by reason of the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain."

The word "charity," as so defined, would include churches and clergymen. In giving free or reduced rate service to clergymen, the utilities will, of course, look into the question of whether the particular clergyman really needs the concession.

While the Commission is inclined to the opinion that no contract for its service entered into by a public utility can stand as against a general statute passed in the exercise of the police power of the state prescribing a method of supervising and regulating the public utilities of the state and orders of this Commission made after due

process under such statute, yet, inasmuch as the matter is directly in issue in several cases now pending before this Commission, we do not feel that we should pass upon it here. While we are of the opinion that some of the contracts for free or reduced rate service heretofore made by public utilities and not included in the four classes of deviations which will be authorized should properly be allowed to continue, such as contracts for right of way heretofore entered into, and while the rate established by other contracts may well be regularly filed by the utility because of differences in conditions justifying a different classification and a different rate, as distinguished from a concession, the Commission is also of the opinion that many of the contracts hitherto established have been established through favoritism and discrimination and should not be permitted to stand as against the present policy of the state, as expressed in the Public Utilities Act, unless it is clear that they must stand for legal reasons. The order in this case will accordingly provide, that within three months from its publication, each public utility of the State which has entered into contracts for free or reduced rate service shall file with the Commission a list of those contracts which the utility desires to continue, with such details with reference to each case that the Commission may intelligently act thereon. The utilities should, wherever possible, bring the rates established in the contracts within their regularly published rates, in which case the customer will pay his rate not by virtue of his contract, but by virtue of the rates on file with this Commission. The utilities should try to weed out all such cases and to present to the Commission only those contracts which establish rates which are not published. When a utility had a rate of general application to some class of its customers in effect on October 10, 1911, and also has a "standard" rate which is higher, the lower rate in effect in October 10, 1911, shall continue in effect as to the customers who enjoyed such rate until the Commission, on application therefor, authorizes a change.

We submit herewith the following form of order:

**ORDER.**

Section 17(b) of the Public Utilities Act, providing in part that no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished or for any service rendered or to be rendered than the rates, tolls, rentals, and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, provided that the Commission may by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility, and the Com-

mission having held a public hearing on the class or classes of cases, if any, in which exceptions from the operation of said section should be established and having called upon all the public utilities of the state to furnish lists of their concessions from published rates as distinguished from regularly filed rates, and suggestions for the correct rule to be established, and careful consideration having been given to all the aspects of the question,

*It is hereby ordered* as follows:

1. The public utilities of this State, other than common carriers, may, if they so desire, in addition to the classes of cases specified as applicable to them in section 17 of the Public Utilities Act (referring to telephone and telegraph companies), grant free or reduced rate service to the Federal and State governments and the political subdivisions thereof, including the departments thereof, and public institutions; fairs and other public expositions and celebrations; charity, as defined in the opinion in this case; and employees.

2. Within three months from the date of this order, all public utilities desiring to continue concessions established by contracts heretofore entered into and not coming under the provisions of paragraph (1) of this order, shall file with this Commission correct copies of such contracts as they may desire to continue, with such explanations, if any, as may show to the Commission clearly the situation with reference to such contracts, whereupon the Commission will decide whether or not it will permit such contracts to stand during their term. In all cases in which utilities do not file contracts within the time herein specified, it shall be unlawful thereafter to charge any rate other than the rate specified in the schedules on file with this Commission as applicable to the class of service specified in the contract; provided, that where a utility had a rate of general application to some class of consumers in effect on October 10, 1911, and also a "standard" rate which is higher than such rate, the lower rate in effect on October 10, 1911, shall continue in effect as to the customers who enjoyed such rate until the Commission, on application therefor, authorizes a change. This paragraph applies to all public utilities other than common carriers, whether they have hitherto filed applications with this Commission or not.

3. This order shall apply only to rates and service over which this Commission has authority.

4. Applications No. 3, No. 80, No. 116 and No. 117, in so far as their prayer comes within the relief hereinbefore in this order granted, are hereby granted and in other respects denied.

The foregoing opinion and order are hereby approved and ordered

filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of January, 1913.

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DECISION No. 422.

C. W. BLABON, E. M. FOSSING, A. HALLEN, L. YATES, J. A.  
EVELETH, A. C. SANDFORD, MISS EDNA TAYLOR,

*vs.*

PEOPLES WATER COMPANY.

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Case No. 344.

*Decided January 24, 1913.*

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REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

All the complainants in the above entitled action having notified this Commission that a satisfactory arrangement has been made with the defendant company concerning the matters set forth in the complaint in the above entitled action, and all the complainants having on January 9, 1913, made written request that the complaint in the above entitled proceeding be dismissed,

*It is hereby ordered* that the complaint in the above entitled proceeding be and the same hereby is dismissed.

By order of the Railroad Commission.

Dated at San Francisco, California, this 24th day of January, 1913.

## DECISION No. 423.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE, SELL AND DELIVER TO THE AMOUNT OF TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ITS BONDS BEARING INTEREST AT THE RATE OF FIVE PER CENT PER ANNUM DUE NOVEMBER 1, 1939, WHICH BONDS ARE TO BE ISSUED UNDER AND SECURED BY TRUST INDENTURE DATED NOVEMBER 1, 1909, EXECUTED BY SAID SOUTHERN CALIFORNIA EDISON COMPANY TO HARRIS TRUST AND SAVINGS BANK AND LOS ANGELES TRUST AND SAVINGS BANK, TRUSTEES.

## Application No. 350.

*Decided January 27, 1913.*

*Held.* There is a reasonable margin of physical values of property over the face value of the bonds already outstanding plus the face value of the bonds herein asked to be authorized and in addition to the other obligations of applicant; that there is every assurance that the earnings will provide ample resources from which to pay interest on the bonded and other indebtedness.

*Held.* That applicant's treasury may be reimbursed out of the proceeds of the sale of said bonds, or a part thereof, for expenditures made out of income for real estate within the past year, said item representing an expenditure properly chargeable to capital account and the real estate being used as part of applicant's plant.

*H. H. Trowbridge, for Applicant.*

## REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by Southern California Edison Company for an order authorizing the issue of \$2,500,000 face value of bonds, bearing interest at the rate of 5 per cent per annum, due November 1, 1939.

Applicant is now, and for a number of years past has been engaged in the business of generating, transmitting and selling electricity and gas for light, heat and power in the counties of Kern, Los Angeles, Orange, Riverside, and San Bernardino, and it also owns and operates gas generating and distributing systems in the cities of Pomona and Venice and in a portion of the city of Los Angeles.

The condition of the capitalization of applicant is as follows:

| CAPITAL STOCK.  |                 |                 |
|-----------------|-----------------|-----------------|
|                 | Authorized.     | Issued.         |
| Common -----    | \$26,000,000 00 | \$8,400,000 00  |
| Preferred ----- | 4,000,000 00    | 4,000,000 00    |
| Totals -----    | \$30,000,000 00 | \$12,400,000 00 |



## CAPITAL STOCK—Continued.

|                                  | Authorized.     | Outstanding.    |
|----------------------------------|-----------------|-----------------|
| Bonds .....                      | \$30,000,000 00 | \$10,043,000 00 |
| Underlying bonds .....           |                 | 3,928,000 00    |
| Totals.....                      | \$30,000,000 00 | \$13,971,000 00 |
| Other indebtedness of applicant: |                 |                 |
| Five year gold notes.....        |                 | \$332,000 00    |
| Notes payable .....              |                 | 1,071,045 84    |
| Accounts payable .....           |                 | 286,665 37      |
| Sundry deposits .....            |                 | 88,203 81       |
| Accrued interest .....           |                 | 255,555 43      |
| Total .....                      |                 | \$2,033,470 45  |

The gross earnings of applicant for the year ending November 30, 1912, are \$4,193,006.72 and the total net earnings for said period are \$2,058,871.39. Deducting bond interest and other interest of \$681,404.65 leaves a balance of \$1,377,466.74. Deducting the dividends paid on preferred and common stock of 5 per cent, amounting to \$620,000, leaves a net balance of \$757,466.74.

Applicant claims total assets of \$29,696,118.36, and of this a physical valuation, eliminating intangibles and other items, of approximately \$20,000,000, as security for the payment of its bonded and other obligations.

After an investigation made by the experts of the Commission, I am convinced that there is a reasonable margin of physical values of property over and above the \$13,971,000 face value of bonds already outstanding, plus the \$2,500,000 of bonds herein asked to be authorized, and in addition the other obligations of applicant amounting to \$2,033,470.45, or a total of outstanding obligations, which will exist if this application be granted, of \$18,504,470.45.

The earnings as shown by applicant give every indication of a prosperous condition, and as it operates through rapidly developing territory, it can be expected that its earnings will increase. Hence, there is every assurance that the earnings will provide ample resources from which to pay interest on the bonded and other indebtedness, as herein shown.

We are asked to permit the sale of these bonds at not less than 92 per cent of their face value. With the proceeds thereof, it is proposed to make additions and betterments to the plant of applicant, as set out in detail in the exhibits filed with the application, and as these improvements are all by way of additions to the physical plant they are proper subjects of capitalization.

Applicant requested that it be reimbursed out of the proceeds of the sale of these bonds, or a part thereof, for expenditures made out of

income for real estate within the past year, which real estate was, and is used, as part of its plant, in the sum of \$51,383.27. This sum is proper to be paid from the proceeds of bonds, as it represents an item properly chargeable to capital account, and therefore this sum may properly be taken from the proceeds of the sale of these bonds.

Attention is called to the fact that, under the trust deed upon which these bonds are to be issued, applicant may only issue 75 per cent in face of bonds for the amount spent in additions and betterments. Therefore, it is apparent that there must be produced in property by applicant a considerable margin over the amount of bonds issued.

I recommend that the application be granted, and submit the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by Southern California Edison Company for an order authorizing the issue by said company of \$2,500,000 face value of its bonds, bearing interest at the rate of 5 per cent per annum, due November 1, 1939, and a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the discharge of its obligations, and for the acquisition of property and the construction, completion, extension, and improvement of its facilities, and that the purposes for which the proceeds of the sale of said bonds are to be used are not in whole, or in part, reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Southern California Edison Company of \$2,500,000 face value of its bonds bearing interest at the rate of 5 per cent per annum, due November 1, 1939, or so much thereof as may be necessary for the purposes set out herein.

Said bonds to be numbered 15373 to 17872, both inclusive, and to be issued under and in pursuance of the terms of a trust indenture dated November 1, 1909, executed by Southern California Edison Company to Harris Trust and Savings Bank, and Los Angeles Trust and Savings Bank, trustees, a copy of which said trust indenture is on file herein, upon the following conditions, not otherwise:

1. Southern California Edison Company shall sell the bonds hereby authorized so as to net said company not less than 92 per cent of the face value thereof, plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said bonds shall be used for the following purposes only:

- (a) For the acquisition and installation of betterments and additions

to the plant and facilities of applicant, as shown in detail in Exhibit "B," described as follows:

### EXHIBIT "B."

*Southern California Edison Company. Estimated expenditures for year 1912.*

#### GENERATING STATIONS.

##### Long Beach Steam Plant:

Construction of additional turbine at Long Beach Steam Plant of 29,000 kilowatt capacity, to be known as "Unit No. 3"—

|   |              |
|---|--------------|
| Turbine 25,000 K. V. A. (20,000 kilowatt and 80 per cent P. F.) | \$240,000 00 |
| Transformers  | 48,000 00    |
| Condenser   | 60,000 00    |
| Electrical equipment  | 40,000 00    |
| Boilers, breeching, etc.  | 180,000 00   |
| Auxiliaries   | 40,000 00    |
| Piping  | 55,000 00    |
| Instruments   | 7,000 00     |
| Four oil storage tanks—two auxiliary oil tanks                  | 40,000 00    |
| Two stacks  | 16,000 00    |
| 110-ton crane   | 16,000 00    |
| Piling  | 12,000 00    |
| Foundation  | 38,000 00    |
| Extension to generator room, boiler room and transmission house | 130,000 00   |
| Steel work for roofs  | 22,000 00    |
| Conduits for circulating water                                  | 30,000 00    |
| Well  | 10,000 00    |
| Protection structure at end of discharge conduits               | 50,000 00    |
| Gate at tunnel entrance   | 800 00       |
| Water tower   | 20,000 00    |
| Engineering, etc.   | 50,000 00    |

|  |                |
|--|----------------|
| Total "Unit No. 3"   | \$1,104,800 00 |
| Completion of construction of "Unit No. 2," now in course of construction: |                |

|                                       | Estimated.   | Expended to Nov. 30, 1912. | Balance.     |
|---------------------------------------|--------------|----------------------------|--------------|
| Boilers and breeching                 | \$119,185 00 | \$31,471 54                | \$87,713 46  |
| Mechanical equipment                  | 283,177 00   | 31,699 80                  | 251,477 20   |
| Electrical equipment                  | 26,000 00    | 12,474 00                  | 13,526 00    |
| Steam and oil piping                  | 52,500 00    | 8,541 13                   | 43,958 87    |
| Oil tanks                             | 16,500 00    | 143 81                     | 16,356 69    |
| Meters and other instruments          | 3,300 00     | 3,472 15                   | 172 15       |
|                                       | \$500,662 00 | \$87,801 93                | \$412,860 07 |
| Estimated expenditures December, 1912 |              |                            | 65,860 07    |

|   |                |
|---|----------------|
| Total balance to complete "Unit No. 2"                  | 347,000 00     |
| Reinforcements and betterments to "Unit No. 1"          | 1,700 00       |
| Construction of store house at Long Beach steam station | 5,000 00       |
| Total Long Beach steam plant                            | \$1,458,500 00 |

## EXHIBIT "B"—Continued.

|  |             |                       |
|--|-------------|-----------------------|
| Amount brought forward.....  |             | \$1,178,500 00        |
| <b>Los Angeles No. 3 Station:</b>  |             |                       |
| Construction of electrical equipment and lightning<br>arresters for 60,000-volt lines.....   | \$6,435 00  |                       |
| Reinforcements and betterments to 2,200-volt dis-<br>tribution equipment .....   | 10,000 00   |                       |
| Reinforcements and betterments to buildings, trans-<br>former equipment, accessory and auxiliary equip-<br>ment at Los Angeles No. 3 station.....  | 10,350 00   |                       |
| <b>Total Los Angeles No. 3 station.....</b>  |             | <b>26,785 00</b>      |
| <b>Water power plants:</b>   |             |                       |
| Reinforcements and betterments to the following<br>plants—   |             |                       |
| Kern River No. 1.....  | \$400 00    |                       |
| Santa Ana River No. 1.....   | 500 00      |                       |
| Santa Ana River No. 2.....   | 8,490 00    |                       |
| Mill Creek No. 1.....  | 575 00      |                       |
| <b>Total water power plants.....</b>   |             | <b>9,965 00</b>       |
| <b>Total generating stations.....</b>  |             | <b>\$1,495,250 00</b> |
| <b>Transmission lines:</b>   |             |                       |
| Construction of 30,000-volt transmission line from<br>Redondo Junction to Inglewood.....   | \$31,500 00 |                       |
| Construction of new 15,000-volt transmission line<br>from McNeil to Pasadena.....  | 25,000 00   |                       |
| Right of way—McNeil to Sherman.....  | 10,000 00   |                       |
| Additions, reinforcements and betterments to Kern<br>River transmission line, including installation of<br>suspension type insulators, reinforcing curves and<br>corners, installation of cable crossing at Piru<br>Creek, new barn at Tejon, etc.....                                 | 10,200 00   |                       |
| Construction of new pole line from Shorb to Pasa-<br>dena .....  | 11,375 00   |                       |
| Construction 30,000-volt single circuit line from<br>Canyon-Colton line to Highlands substation, ad-<br>ditional circuit on Mill Creek No. 1 line and rein-<br>forcements and additions to pole line from junc-<br>tion with tower line at Anaheim Road to San<br>Pedro Junction ..... | 14,500 00   |                       |
| Construction of new line from mouth of Santa Ana<br>Canyon to and connecting with Santa Ana River<br>No. 1 and Santa Ana River No. 2 power house.....  | 18,400 00   |                       |
| <b>Additional telephone circuits:</b>  |             |                       |
| Los Angeles No. 3—Long Beach via Ingle-<br>wood .....  | \$5,000 00  |                       |
| Inglewood-Ocean Park .....   | 2,500 00    |                       |
| Puente-Katella .....   | 4,000 00    |                       |
| Changing all present circuits to cross arms<br>to comply with state law.....   | 1,000 00    |                       |
|  | 12,500 00   |                       |
| Equipment for patrolmen.....   | 5,000 00    |                       |
| <b>Total transmission lines.....</b>   |             | <b>138,475 00</b>     |

## EXHIBIT "B"—Continued.

|   |             |                   |
|---|-------------|-------------------|
| Amount brought forward.....   |             | \$1,633,725 00    |
| <b>Substations:</b>   |             |                   |
| Construction of new substations in Highlands, including real estate, buildings and equipment..... | \$16,500 00 |                   |
| Additions to equipment of Ohino substation.....   | 16,800 00   |                   |
| Construction of new substation at Puente, including buildings and equipment.....                  | 54,380 00   |                   |
| Additions to equipment of Katella substation, including extension of building.....                | 20,100 00   |                   |
| Construction of new substation at Torrence, including buildings and equipment.....                | 25,000 00   |                   |
| Construction of new substation at Slauson, including building and equipment.....                  | 56,500 00   |                   |
| Construction of new substation at Monrovia, including real estate, buildings and equipment.....   | 3,400 00    |                   |
| Construction of new substation at Whittier, including buildings and equipment.....                | 22,500 00   |                   |
| Substation equipment at Los Angeles in basement of leased building.....                           | 47,550 00   |                   |
| Purchase of real estate to be used for substation as follows:                                     |             |                   |
| Pomona .....  | \$2,500 00  |                   |
| Sherman .....   | 2,500 00    |                   |
| Lamanda Park .....  | 1,000 00    |                   |
| Altadena .....  | 1,000 00    |                   |
| Inglewood .....   | 3,000 00    |                   |
|   | 10,000 00   |                   |
| <b>Additions, reinforcements and betterments to present substations as follows:</b>               |             |                   |
| Redlands .....  | \$12,000 00 |                   |
| Colton .....  | 1,250 00    |                   |
| Fullerton .....   | 4,000 00    |                   |
| Pomona .....  | 8,250 00    |                   |
| Santa Ana .....   | 5,150 00    |                   |
| Long Beach .....  | 11,200 00   |                   |
| Moneta .....  | 3,300 00    |                   |
| Redondo .....   | 9,575 00    |                   |
| Inglewood .....   | 14,070 00   |                   |
| Ocean Park .....  | 6,560 00    |                   |
| McNeill .....   | 5,120 00    |                   |
| San Fernando .....  | 3,350 00    |                   |
| Castaic .....   | 4,460 00    |                   |
| Tejon .....   | 4,070 00    |                   |
| San Pedro street (Los Angeles No. 5).....   | 12,350 00   |                   |
| University (Los Angeles No. 4).....   | 1,890 00    |                   |
| Vineyard .....  | 3,860 00    |                   |
| Portable substation for Los Angeles district  | 1,600 00    |                   |
| Los Angeles No. 1.....  | 5,350 00    |                   |
| Los Angeles No. 2.....  | 14,850 00   |                   |
| Pasadena .....  | 1,000 00    |                   |
| Sierra Madre .....  | 600 00      |                   |
| Orange .....  | 1,500 00    |                   |
| Wilmington .....  | 1,500 00    |                   |
|   | 136,855 00  |                   |
| Purchase of reserve stock, regulators and transformers for emergencies.....                       | 40,000 00   |                   |
| <b>Total substations .....</b>  |             | <b>449,585 00</b> |

## EXHIBIT "B"—Continued.

|  |             |                |
|--|-------------|----------------|
| Amount brought forward.....  |             | \$2,083,310 00 |
| <b>Distributing systems (electric):</b>  |             |                |
| <b>Additions, reinforcements and betterments to present overhead distributing systems, including poles and fixtures, distributing systems, transformers and devices, to take care of increased load, improve service and comply with state law requirements, as follows:</b> |             |                |
| Los Angeles .....  | \$72,780 00 |                |
| Pasadena .....   | 25,500 00   |                |
| Monrovia .....   | 17,000 00   |                |
| Pomona .....   | 25,400 00   |                |
| Redlands .....   | 52,900 00   |                |
| Whittier .....   | 13,600 00   |                |
| Long Beach .....   | 9,500 00    |                |
| San Pedro .....  | 12,500 00   |                |
| Redondo .....  | 16,700 00   |                |
| Santa Monica and Venice.....   | 16,000 00   |                |
| Santa Ana .....  | 29,400 00   |                |
| Van Nuys and Lankershim.....   | 14,500 00   |                |
|  |             | \$305,780 00   |
| <b>Los Angeles underground system:</b>   |             |                |
| <b>Additions, reinforcements and betterments to present underground distributing systems, including conduit system, distributing system, transformers and devices to take care of increased load, improve service, etc. ....</b>   |             | 50,515 00      |
| <b>Distributing systems (gas):</b>   |             |                |
| <b>Reinforcements and betterments to present distributing systems, including installation of governors and regulators:</b>   |             |                |
| San Pedro .....  | \$6,500 00  |                |
| Pomona .....   | 5,800 00    |                |
| Santa Monica and Venice.....   | 6,500 00    |                |
|  |             | 18,800 00      |
| <b>Construction of new distribution main from Pomona to Chino .....</b>  |             | 14,000 00      |
| (Gas and electric):  |             |                |
| <b>New construction arising out of development of business and additions of new consumers, including extensions of distribution systems, new services, meters, etc., both gas and electric departments....</b>   |             | 600,000 00     |
| <b>Total distributing systems.....</b>   |             | 989,095 00     |
| <b>Gas plants:</b>   |             |                |
| <b>Additions and betterments to present gas plant at San Pedro .....</b>   |             | \$1,000 00     |
| <b>Additions, reinforcements and betterments to Pomona gas plant, including purchase of real estate, miscellaneous equipment and building for shop....</b>   |             | 20,700 00      |
| <b>Additions, reinforcements and betterments to Santa Monica gas plant, including building, generator, scrubbers, etc. ....</b>  |             | 35,500 00      |
| <b>Total gas plants.....</b>   |             | 57,200 00      |

## EXHIBIT "B"—Continued.

|   |                |
|---|----------------|
| Amount brought forward.....   | \$3,129,605 00 |
| <b>General:</b>   |                |
| Construction of additions to general office building<br>in city of Los Angeles.....   | 100,000 00     |
| Purchase of additional stable equipment as the need<br>may develop .....  | 40,000 00      |
| Construction of new warehouses and additions to<br>present warehouses, as follows:  |                |
| Pomona .....  | \$800 00       |
| San Pedro .....   | 2,000 00       |
| Whittier .....  | 6,000 00       |
| Total .....   | 8,860 00       |
| Additional equipment for test department and shops .....  | 6,300 00       |
| Estimated amount of construction expenditures<br>covering month of December, 1912, for additions and<br>betterments, being balance of 1912 construction ac-<br>count over and above the amount of such expendi-<br>tures, for which bonds have been heretofore certi-<br>fied and issued (exclusive of Long Beach Steam<br>Plant Unit No. 2 and all real estate)..... | 165,000 00     |
| (b) For reimbursing the treasury of applicant for<br>money expended within the past five years:   |                |
| Real estate purchased during the period May 1, 1911,<br>to November 30, 1912, for which bonds have not<br>been heretofore certified and issued:   |                |
| May, 1911 .....   | \$181 34       |
| July, 1911 .....  | 4,215 00       |
| August, 1911 .....  | 1,309 10       |
| September, 1911 .....   | 71 70          |
| October, 1911 .....   | 2,427 00       |
| November, 1911 .....  | 700 00         |
| December, 1911 .....  | 5,286 80       |
| January, 1912 .....   | 4,162 85       |
| February, 1912 .....  | 3,159 10       |
| March, 1912 .....   | 418 50         |
| April, 1912 .....   | 15 00          |
| May, 1912 .....   | 619 50         |
| June, 1912 .....  | 2,692 43       |
| July, 1912 .....  | 4,081 50       |
| August, 1912 .....  | 524 95         |
| October, 1912 .....   | 2,507 00       |
| November, 1912 .....  | 19,011 50      |
|   | 51,383 27      |
| Grand total .....   | \$3,501,088 27 |
| Deduct from amount chargeable to renewals and<br>maintenance .....  | 150,000 00     |
| Grand total .....   | \$3,351,088 27 |

3. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sales or other dis-

position, the moneys realized therefrom and the use and application of such moneys.

4. The authority hereby given to issue such bonds shall apply only to such bonds issued by said company on or before the thirtieth day of January, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of January, 1913.

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DECISION No. 424.

IN THE MATTER OF THE APPLICATION OF SAN DIMAS WATER COMPANY TO PURCHASE THE STOCK AND PROPERTIES, EXCEPTING THE DOMESTIC WATER SYSTEM, OF SAN DIMAS IRRIGATION COMPANY; TO PURCHASE THE STOCK AND PROPERTIES OF ARTESIAN BELT WATER COMPANY AND THE STOCK AND PROPERTIES OF THE CHARTER OAK RESERVOIR COMPANY; AND OF SAID COMPANIES TO SELL THEIR STOCK AND PROPERTIES ACCORDINGLY TO SAN DIMAS WATER COMPANY; OF SAN DIMAS WATER COMPANY TO ISSUE STOCK AND BONDS; OF SAN DIMAS-CHARTER OAK DOMESTIC WATER COMPANY TO ISSUE STOCK AND TO ACQUIRE THE DOMESTIC WATER SYSTEM OF SAN DIMAS IRRIGATION COMPANY AND OF SAN DIMAS IRRIGATION COMPANY TO SELL THE SAME.

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Application No. 338.

*Decided January 27, 1913.*

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This application involves the separation of properties of three existing water companies and the merger of such properties into two new corporations, viz: San Dimas Water Company, the operation of which is proposed to be confined to the distribution of water for irrigation among its own stockholders, and San Dimas-Charter Oak Domestic Water Company, the operation of which is proposed to be confined to the distribution and sale of water for domestic use. While San Dimas Water Company urged that, under its amended articles of incorporation, it is purely a mutual company and not within the jurisdiction of the Commission, it developed at the hearing upon the application that it has been conducting its business as a public utility and has, therefore, placed itself within the jurisdiction of the Commission.



The consolidation of the interests of the water companies being urged by applicants for purposes of efficiency and economy and upon proper inquiry into the valuations of the properties to be transferred, the application is granted.

*E. H. Sanford*, for Applicants.

#### REPORT OF THE COMMISSIONER.

LOVELAND, *Commissioner*.

This is an application in which three water companies serving a portion of Los Angeles county in and adjacent to San Dimas, desire to merge their interests and to conduct their business hereafter through the medium of two corporations, one devoted to the distribution of water for purposes of irrigation and the other devoted to the distribution and sale of water for domestic use.

San Dimas Irrigation Company and Artesian Belt Water Company, applicants herein, are the owners of separate water systems operating in a section of Los Angeles county devoted to the cultivation of citrus fruits, that embraces San Dimas, Charter Oak, and a part of Lordsburg. The Charter Oak Reservoir Company, applicant herein, is the owner of a reservoir system for the distribution of water in Charter Oak, Los Angeles county. The Charter Oak Reservoir Company is owned jointly by San Dimas Irrigation Company and Artesian Belt Water Company. Its reservoir is used primarily for equalizing the water flow for these two companies.

It is now proposed that from these three corporations there be formed two corporations, namely, the San Dimas Water Company and the San Dimas-Charter Oak Domestic Water Company. It is proposed that the domestic water system now owned by San Dimas Irrigation Company be transferred to and acquired by San Dimas-Charter Oak Domestic Water Company and that San Dimas-Charter Oak Domestic Water Company confine its operations to the distribution and sale of water for domestic use. It is also proposed by applicants that the other properties of San Dimas Irrigation Company and all the properties of Artesian Belt Water Company and of the Charter Oak Reservoir Company be consolidated into the ownership of San Dimas Water Company, and that San Dimas Water Company confine its operations to the distribution of water for irrigation among its own stockholders. It appears, however, that preliminary steps have been taken toward this consolidation and that San Dimas Water Company has not been confining its operations to its stockholders, but has been distributing and selling water to the general public as well.

While San Dimas Water Company has urged that under its amended articles of incorporation, it is purely a mutual company and not within the jurisdiction of the Railroad Commission, it developed at the hearing of the application that it has been conducting its business as a public

utility and has therefore placed itself within the jurisdiction of this Commission. As to jurisdiction over future operations of San Dimas Water Company under its amended articles of incorporation, it is not now necessary to pass.

The consolidation of the interests of the water companies is urged by applicants for purposes of efficiency and economy. Applicants possess water rights covering a tract of 3,000 acres and in addition own valuable lands on which water is being developed, adjacent to the territory they serve, including so-called "canyon lands" with gravity flow from 40 to 200 inches, changing with the season.

The water is developed by wells and used in irrigating lands devoted mainly to the citrus fruit industry and in supplying, for domestic use, the inhabitants of San Dimas and Charter Oak, and residents of adjacent territory.

San Dimas Water Company has been incorporated with an authorized stock issue of 3,000 shares of the par value of \$100.00 each, and an authorized bonded indebtedness of \$150,000.00. Applicant desires at this time to issue 2,050 shares of its capital stock, as follows:

|  |              |
|--|--------------|
| For San Dimas Irrigation Company's stock and property,<br>excluding the domestic water system----- | 1,300 shares |
| For stock and properties of Artesian Belt Water Company--  | 660 shares   |
| To defray expenses incident to organization (to be sold at par)                                    | 40 shares    |
| For fifty shares of stock of San Dimas-Charter Oak Domestic<br>Water Company -----                 | 50 shares    |
| Total -----  | 2,050 shares |

San Dimas Water Company desires also to issue \$100,000 of its authorized issue of thirty-year six per cent bonds of the denomination of \$500, secured by mortgage and deed of trust to Title Guarantee and Trust Company of Los Angeles. It proposes to sell these bonds at 90, and to use the proceeds as follows:

|   |             |
|---|-------------|
| To refund bonded indebtedness of San Dimas Irrigation<br>Company -----                          | \$10,000 00 |
| To refund floating indebtedness of San Dimas Irrigation<br>Company -----                        | 21,826 29   |
| To refund mortgage indebtedness of Artesian Belt Water<br>Company to Louis Phillips estate----- | 10,000 00   |
| To refund floating indebtedness of Artesian Belt Water<br>Company -----                         | 5,948 50    |
| To purchase stock and properties of The Charter Oak<br>Reservoir Company -----                  | 6,500 00    |
| Total -----   | \$54,274 79 |

Applicants have presented satisfactory evidence that the indebtedness in the amounts herein specified was incurred for plant betterments and was not in whole or in part reasonably chargeable to operating expenses or income.

The balance to be derived from the proceeds of the sale of the bonds, applicant desires to apply upon a part of the following:

|   |             |
|---|-------------|
| New lands and wells near Lordsburg, the total cost of which will be -----   | \$34,687 50 |
| New 18-inch water main from Lordsburg lands to reservoir--  | 5,000 00    |
| Site for reservoir-----   | 500 00      |
| Connections from reservoir to water system-----   | 3,831 88    |
| Construction of reservoir to equalize flow-----   | 10,200 75   |
| Service connections in the ordinary course of business development for which applicant states it is unable to give any exact figure at this time----- | -----       |

Applicants state that they desire to make only a partial payment at this time upon the lands near Lordsburg, and to use the remaining proceeds from the sale of the bonds for the other purposes herein specified.

The appraisal of the physical properties of San Dimas Irrigation Company, Artesian Belt Water Company, and the Charter Oak Reservoir Company, submitted by the applicants, and the appraisal of said properties prepared by the Commission's engineering department, do not vary in any great degree. Applicants presented an appraisal of their physical properties in the total sum of \$257,241.89, having excluded from such appraisal all water rights with the exception of an arbitrary valuation of \$50,000 upon the so-called "canyon lands," which include certain undefined amount above the real estate valuation.

San Dimas-Charter Oak Domestic Water Company applies for authority to purchase fifty shares of the capital stock of San Dimas Water Company, by which it may become possessed of a proportionate share of the water developed by San Dimas Water Company. This water it proposes to distribute and sell for domestic use in San Dimas and Charter Oak and vicinity.

San Dimas-Charter Oak Domestic Water Company has an authorized stock issue of \$25,000, composed of 250 shares of the par value of \$100 each. It is proposed to issue this stock as follows:

|   |            |
|---|------------|
| To San Dimas Irrigation Company for its domestic water system -----     | 200 shares |
| To San Dimas Water Company in exchange for 50 shares of its stock ----- | 50 shares  |
| Total -----   | 250 shares |

Applicants state that the physical value of the properties to be acquired by this domestic water system is not less than \$23,000.

A hearing having been held upon the application herein, and it appearing that the different sums which it is now proposed to refund from the proceeds of the bonds as applied for were not properly chargeable to operating expenses or income, I find that the interests of the

public will best be served by granting the application herein, and I submit the following order:

**ORDER.**

Application having been made by San Dimas Water Company to purchase the stock and properties, excepting the domestic water system, of San Dimas Irrigation Company; to purchase all the stock and properties of Artesian Belt Water Company and the stock and properties of the Charter Oak Reservoir Company; and by said companies to sell their stock and properties accordingly to San Dimas Water Company; and by San Dimas Water Company to issue stock and bonds; and by San Dimas-Charter Oak Domestic Water Company to issue stock and to acquire the domestic water system of San Dimas Irrigation Company and by San Dimas Irrigation Company to sell the same, and a hearing having been held;

*It is hereby ordered* that San Dimas Water Company be given and is hereby given authority to purchase the stock of and all the properties, excepting the domestic water system, of San Dimas Irrigation Company; to purchase the stock and all the properties of Artesian Belt Water Company; to purchase the stock and all the properties of the Charter Oak Reservoir Company;

That said companies be given and are hereby given authority to sell their stock and properties to San Dimas Water Company, as above set forth;

That San Dimas-Charter Oak Reservoir Company be given and is hereby given authority to acquire the domestic water system of San Dimas Irrigation Company, and that San Dimas Irrigation Company be given and is hereby given authority to sell the same.

And it appearing that the purposes for which San Dimas Water Company desires to issue its stock are not reasonably chargeable to operating expenses or income,

*It is hereby ordered* that San Dimas Water Company be given authority, and is hereby given authority to issue its capital stock as follows:

|  |                     |
|--|---------------------|
| For San Dimas Irrigation Company's stock and property,<br>excluding the domestic water system----- | 1,300 shares        |
| For stock and properties of Artesian Belt Water Company---   | 660 shares          |
| To defray expenses incident to organization-----   | 40 shares           |
| For fifty shares of stock of San Dimas-Charter Oak Domestic<br>Water Company -----                 | 50 shares           |
| <b>Total -----</b>   | <b>2,050 shares</b> |

The stock hereby authorized to be issued by San Dimas Water Company shall be issued on the following conditions, and not otherwise:

- (1) The forty shares above noted to be sold to defray expenses incident to organization shall be sold at par.

(2) San Dimas Water Company shall keep separate, true and accurate accounts showing the receipts and application in detail of the proceeds of the sale of the stock hereby authorized to be issued, and on or before the twenty-fifth day of each month, it shall make verified reports to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of sale, moneys or properties realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(3) The authority hereby given to issue said stock shall apply only to stock issued by San Dimas Water Company on or before the thirty-first day of December, 1913.

And it appearing further to the Commission that the purposes for which San Dimas Water Company desires to issue bonds are not in whole or in part chargeable to operating expenses or income;

*It is hereby ordered* that San Dimas Water Company be given and is hereby given authority to issue \$100,000 of its thirty-year six per cent bonds under that certain mortgage and deed of trust to Title Guarantee and Trust Company of Los Angeles, dated July 1, 1912, as follows:

|   |                    |
|---|--------------------|
| To refund bonded indebtedness of San Dimas Irrigation Company .....                           | \$10,000 00        |
| To refund floating indebtedness of San Dimas Irrigation Company .....                         | 21,826 29          |
| To refund mortgage indebtedness of Artesian Belt Water Company to Louis Phillips estate ..... | 10,000 00          |
| To refund floating indebtedness of Artesian Belt Water Company .....                          | 5,948 50           |
| To purchase stock and properties of the Charter Oak Reservoir Company .....                   | 6,500 00           |
| Total .....   | <u>\$54,274 79</u> |

San Dimas Water Company is hereby authorized to apply the balance of proceeds from the sale of the bonds, as hereby authorized, upon the following:

|   |             |
|---|-------------|
| Part payment for lands and wells, near Lordsburg, the total cost of which will be .....   | \$34,687 50 |
| New 18-inch water main from Lordsburg lands to reservoir, as specified in application .....   | 5,000 00    |
| Site for reservoir .....  | 500 00      |
| Connections from reservoir to water system .....  | 3,831 88    |
| Construction of reservoir to equalize flow .....  | 10,200 75   |
| Service connections for consumers, in the ordinary course of business development, in amounts to be reported and approved by the Commission ..... | -----       |

Said bonds shall be issued on the following conditions, and not otherwise:

(1) Said bonds shall be sold so as to net San Dimas Water Company not less than 90 per cent of the par value of the principal thereof, plus accrued interest thereon.

(2) Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(3) The authority hereby given San Dimas Water Company to issue such stock and bonds shall apply only to stock and bonds issued by said company on or before the thirty-first day of December, 1913.

And it appearing further that the purposes for which San Dimas-Charter Oak Domestic Water Company desires to issue stock, are not in whole or in part chargeable to operating expense or income,

*It is hereby ordered* that San Dimas-Charter Oak Domestic Water Company be given authority, and is hereby given authority to issue shares of its capital stock, as follows:

|   |            |
|---|------------|
| To San Dimas Irrigation Company for its domestic water system -----     | 200 shares |
| To San Dimas Water Company in exchange for 50 shares of its stock ----- | 50 shares  |
| Total -----   | 250 shares |

The stock hereby authorized to be issued shall be issued upon the following conditions, and not otherwise:

(1) San Dimas-Charter Oak Domestic Water Company shall on or before the twenty-fifth day of each month make verified reports to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of sale, the properties obtained in exchange therefor, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(2) The authority hereby given to issue said stock shall apply only to stock issued by said company on or before the thirty-first day of December, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of January, 1913.

## DECISION No. 425.

## TEHAMA COUNTY TELEPHONE COMPANY

vs.

## THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 271.

## GLENN COUNTY TELEPHONE COMPANY

vs.

## THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 272.

Complainants ask for a physical connection between their telephone systems and the system of defendant. Upon the evidence, the Commission finds—

- (1) That the present service of the independent companies, the plaintiffs herein, is superior to that of the defendant company with reference to speed of operation, clearness of sound and quality of service.
- (2) That a physical connection can reasonably be made between the lines of the defendant company and the lines of plaintiffs between their respective exchanges of Red Bluff and Willows and that the lines of these companies can be made to form a continuous line of communication by the construction and maintenance, between and in said respective exchanges, of suitable connections for the transfer of messages or conversations.
- (3) That public convenience and necessity will be subserved by such connections.
- (4) That the companies, parties to these proceedings, have failed to establish joint rates, tolls or charges for service by or over their lines and that joint rates, tolls and charges ought to be established.
- (5) That the purpose for which these connections are desired is not primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, but, rather, that the purpose is to secure the transmission of long distance or toll messages and conversations from a point in one city or town or county to a point in another city or town or county to the extent indicated in the order.
- (6) That if the connection is made the result will not be, as insisted by defendant, to give the use of a portion of its system to the independent companies, nor to deprive defendant of the control of its own property and of the use of its property without due process of law.
- (7) That the defendant has not adequately served the public in the territory in question, and that such failure has directly brought about and called into being the independent companies which now desire this connection.

*Held*, That no duplication will be brought about by permitting said physical connections, and, hence, no economical fallacy produced, and that the duplication that already exists is the direct result of the default, on the part of the defendant, in the adequate performance of its duty.

*Held*, No public utility, or no other monopoly, as far as that is concerned, can ever justify, nor should it be able so to do, its existence as a monopoly on the theory of an advantage to its patrons which does not exist.

*Ordered*, That physical connections, at the expense of plaintiffs, and through routes be established as prescribed; that joint rates be made and used.

*H. P. Andrews*, for Complainants.

*Hunt Chipley* and *H. D. Pillsbury*, for Defendants.

## REPORT OF THE COMMISSION.

ESHLEMAN and THELEN, *Commissioners*.

In these cases complainants ask for a physical connection between their telephone systems and the system of defendant. The complaints in these cases were filed on April 30, 1912, and are substantially in the same form in both cases. The complaint in Case No. 271 alleges in effect that complainant is a public utility owning and operating a telephone system in Tehama County, California, and having connected with its system in actual use and service 698 stations; that defendant is a public utility corporation doing a general telephone business in California and owning long distance toll lines throughout the State, one of its exchanges being situated in Red Bluff, Tehama County; that complainant has requested the defendant to establish a long distance connection between the exchanges of the parties at Red Bluff, but the defendant has refused to comply with the request; that the telephone lines of the parties can be made to form a continuous line and that the physical connection between the exchanges of the parties can reasonably be made by the construction of a trunk line between the exchanges of the parties at Red Bluff and that public convenience and necessity will be subserved by such connection; that the portion of the expense of making the connection to be borne by defendant will not exceed \$50 and that the amount of business which will be transacted through such connection cannot be accurately estimated; that 457 of complainant's telephone stations are held by subscribers who do not have telephones belonging to defendant or connected with defendant's system, and that the persons using these 457 telephones are without long distance service; that the service of complainant's telephone system is far superior to that of defendant and that it would be a hardship upon the subscribers of complainant's system to be compelled to use defendant's telephones in order to secure long distance connection.

The complaint in Case No. 272 is practically identical with that in Case No. 271, except that complainant's property is situated in Glenn County and consists of some 889 telephones, of which 570 are held by subscribers who do not have telephones belonging to defendant.

On June 3, 1912, the defendant in each of these cases filed its answers, which answers are almost identical in form, and deny most of the material allegations of the complaints.

The two cases came on for hearing on June 14, 1912, at which time they were consolidated for hearing. At the close of the hearing, both parties requested permission to file briefs, which permission was granted. The briefs have been filed and the cases are now ready for decision.

Tehama County Telephone Company operates a telephone business within the county of Tehama, consisting both of local exchange business



and of toll business within the county. Glenn County Telephone Company operates a telephone system within Glenn County and a toll business within that county. Each of these companies also does a long distance business with the other county by means of a toll wire circuit running between Red Bluff and Willows on the poles of the Postal Telegraph Company.

The Tehama County Company has two exchanges and The Pacific Telephone and Telegraph Company has three exchanges in Tehama County. The Glenn County Telephone Company has four exchanges and the Pacific Telephone and Telegraph Company operates seven exchanges in Glenn County, including some magneto exchanges at Fruto, Winslow, and Elk Creek.

On April 29, 1912, the Tehama County Telephone Company had 698 subscribers, of whom 457 did not have one of defendant's telephones. On the same day the Glenn County Telephone Company had 889 subscribers, of whom 570 were not duplicated by defendant. On March 31, 1912, defendant operated some 870 telephones in Glenn County, of which something over 600 were owned by defendant and the remainder were owned by farmers and were connected with what is known as "Farmers' Lines." On the same day defendant operated in Tehama County 1,003 telephones, including a considerable number of farmers' phones. Of all the rural telephones in these two counties operated by defendant, 70 per cent are owned by farmers and only 30 per cent by defendant. In other words, defendant's exchange development has been largely confined to the towns and cities, while the telephone lines in the country operated by defendant have been constructed and are owned by the farmers themselves.

As stated by complainants, the value of the plant of the Tehama County Telephone Company is something over \$60,000 and that of the Glenn County Telephone Company something over \$73,000. On January 1, 1912, the value of defendant's exchange plant in Glenn County, as stated by defendant, was \$66,000 and of its toll plant \$34,150, making a total of \$100,150. On March 23, 1912, the value of defendant's exchange plant in Glenn County had increased from \$66,000 to \$76,000. On January 1, 1912, the value of defendant's exchange plant in Tehama County, as stated by defendant, was \$75,000 and of its toll plant \$60,000, making a total of \$135,000. On March 23, 1912, the value of defendant's exchange plant in Tehama County had increased from \$75,000 to \$88,300.

The Glenn and Tehama County Telephone companies own all the plant which they operate except what is known as "Swanson's Line," extending from Red Bluff northeasterly and operating somewhat in excess of 60 telephones. Defendant owns the toll plant which it operates and the exchange plant within the cities and towns, but, as has been

said, at least 70 per cent of the exchange phones operated by defendant within the country districts are owned by the farmers.

Glenn County Telephone Company started operations in 1908 and Tehama County Telephone Company in 1911. In 1908, at the time when the Glenn County Company commenced its operations, the defendant confined its operations principally to the cities and towns. It did not build into the outlying districts and the farmers were obliged to build their own lines. At that time the service of the defendant was very much poorer than it is at present. The defendant company at that time operated what is known as the magneto or "coffee grinder" system. In order to get "Central" by this system it is necessary to ring a crank and when "Central" desires to reach a subscriber on the line, "Central" rings a crank, which rings the bell on each of the telephones on the line. This system permits of what is known as "rubbering" by each of the other subscribers on the line taking down their telephone in order to hear what is being said, and the noise of the ringing of other subscribers' telephones is undesirable. During the same period, defendant refused to go out and repair the Farmers' lines for the farmers, with the result that the farmers had to do the repairing themselves. The poor quality of the service and the failure of defendant to build into the country districts resulted in the formation of the two independent companies.

The defendant company was the first in the field and built a toll line running north and south through Glenn and Tehama counties to the present exchanges at Willows and Red Bluff. When the independent companies started their operations they duplicated this portion of defendant's system. The independent companies then began building out into the country in both sides of these counties and developing territory which has not been developed by defendant. During the early portion of 1912 the defendant company began to build out into the country districts and to duplicate a very large portion of the lines of the independent companies. In all cases except the toll lines heretofore specified and the exchanges connected therewith in cities and towns along the line, the independent companies were in the field first. After January, 1912, in Tehama County, the defendant duplicated the line running southwest from Red Bluff to Paskenta, which was formerly an independent line and had been purchased by the Tehama County company. The defendant also duplicated Swanson's line, running northeast of Red Bluff, these two lines being the two chief lines running into the country from Red Bluff. The defendant company also duplicated various other lines which had been built by the Tehama County company.

After January, 1912, and particularly after March 23, 1912, defendant duplicated the lines of the Glenn County Telephone Company to the north, east and south of Orland, in the vicinity of Willows, particu-

larly east to Glenn and south into what is known as the Packer Tract. The result of these duplications in these two counties has been that at the present time most of the lines of the independent companies have been duplicated by the defendant company. It is clear from the evidence that the purpose of this duplication is to drive the independent companies out of business. Another device used to this same end was to give free exchange service between towns which had not theretofore had such service, such as between Willows and Butte City and Red Bluff and Los Molinos.

After the advent of the independent companies the defendant company materially improved its service within the cities and towns. It now largely has installed what is known as the common battery system, which is a considerable improvement on the old magneto or "coffee grinder" system. The latter system, however, is still in use by defendant throughout the country districts of these two counties.

The independent companies operate throughout their entire territory what is known as the Dean or Home or Harmonic system. This is a system whereby the bells are tuned to respond only to certain currents, so that only one bell on the line rings at a time. The ring of the bell is considerably louder than that of the ordinary coffee grinder system, so that people outside of the house can more readily hear it. It is also possible to secure "Central" and the party at the other end of the line more speedily by use of the Dean system, and the sound is considerably clearer than is the case with either the coffee grinder system or the common battery system.

The uncontradicted testimony in this case is, that the present system of the independent telephone companies is very much preferable to that of the defendant company. This was the testimony both of men who used only the phones of the independent companies and of others who used the phones of both the independent companies and of the defendant company. During the course of the trial, after the independent companies had introduced a number of witnesses, all of whom testified that the service of the independent companies was superior to that of defendant company, the defendant stipulated that the users in Tehama and Glenn counties of the service of the independent companies would all testify that the service of the independent companies is superior to that of the defendant company. In view of this stipulation it became unnecessary for the complainants to introduce further testimony on this point.

We find as a fact from the evidence in these cases that the present service of the independent companies is superior to that of the defendant company with reference to speed in reaching the party at the other end, the clearness of the sound and quality of the service.

A portion of the territory in Tehama and Glenn counties is at present

served by the independent companies but not by the defendant company. Among these points are Baynes Creek Post Office and Inskip, which are exclusively served by Swanson's line (Transcript, page 154); Battle Creek Bottom (Transcript, page 156), as to which the facts are the same; the Bayless district in Glenn County, exclusively served by the Glenn County company (Transcript, page 135); the district south and east of Willows (Transcript, page 136), which is exclusively served by the Glenn County company; and also a number of other lines out from Proberta and Corning.

It also appears from the testimony that the independent companies have over 1,000 subscribers who do not have telephones of the defendant company and that these people would like to have long distance service. It appears further that these people are confronted with the alternative of continuing their present superior local service without the advantage of long distance service, or of being compelled to take inferior local service so that they may be able to avail themselves of the defendant company's long distance service.

On the question of public convenience and necessity, all witnesses who were asked the question testified that in their opinion, public convenience and necessity demanded the connection asked for. This was the testimony both of witnesses who used the phones of the independent companies exclusively and of those who used both phones, and from all the evidence on this point we believe that public convenience and necessity does demand the connection;

And we find as a fact that the public convenience and necessity require the making of the connections as prayed for.

While defendant argued that there were difficulties in making the connections desired and also in transmitting calls from the system of the independent companies to points on the defendant company's lines, it appears from the testimony that in a large number of cases defendant does have physical connections with other independent companies which are not subject to its control. The defendant company has held and now maintains connections for long distance business with telephone plants located in the following cities in California: Los Gatos, Gilroy, Morgan Hill, Sanger, Reedley, Healdsburg, Roseville, Colusa County, Corcoran, Redlands, Ferndale, Corona, Whittier, Calistoga, Guerneville, Sonoma, Lakeport, Lindsay, Exeter, Lemon Cove, and Weed.

In quite a number of cases the defendant company maintains physical connection with a telephone system not using the Bell telephone. At the hearing defendant admitted that a physical connection between its system and that of the independent companies, which use the Dean or Home telephone, is practicable and that there is no insuperable operating difficulty connected therewith. The defendant company at present has connections with the following exchanges in California, using at

least in part instruments other than the Bell Telephone: Colusa County, Healdsburg, Lindsay, Los Gatos, Morgan Hill, Roseville, Gilroy, Sanger, Corcoran, Lemon Cove, and Reedley.

In addition to these places, the defendant company, under permission asked for by that company and granted by this Commission, has installed a physical connection between its plant in the city of Pasadena and the plant in said city formerly owned by the Home Telephone Company of Pasadena, using the Home phone, and as the result of that connection, subscribers having the Home phones are conversing without apparent difficulty over long distance with points on the lines of the defendant company and *vice versa*.

In this connection we would draw attention also to the fact that Swanson's line running from Red Bluff northeast in Tehama County, which line uses the Dean phones, was for a time connected with the defendant company with apparently no complaint as to operating difficulties on the part of his patrons desiring to secure long distance connections with points on the lines of defendant company.

Mr. Burkett, defendant's engineer, testified that connection could be made between the lines of the Tehama County company and the defendant company in Red Bluff, and the lines of the Glenn County company and the defendant company in Willows by stringing between the offices a 25-pair No. 19 gauge cable (Transcript, page 190), and that it would be necessary to set aside one operating position in each of these offices. He estimated the cost for the Red Bluff connections as \$500 and for the Willows connection as \$450, not counting the operating positions. He stated that the operating position in Red Bluff would cost approximately \$350 and that in Willows approximately \$500. Mr. Lindstrom, the independent companies' engineer, testified that connection could be made by the use of a pair or two pairs of 22 gauge cable wires in Red Bluff, with the necessary appurtenances and that the cost of the connection would be between \$20 and \$25. He stated also that the Tehama County company now has on hand a cable which may be used for this purpose. He testified that \$35 would cover the entire connection, with necessary labor and material. He testified that the cable itself was worth about \$500. He testified (Transcript, page 379) that the present operators of the defendant company's switchboard could handle the toll business between the two telephone companies, and that \$15 would cover the cost of extra equipment in the office of the defendant company at Red Bluff to prepare itself for the additional business. He further testified that the cost of connection would be about \$35 at Willows, and that the defendant company has just installed a new switchboard there.

There was considerable testimony, both direct and by analogy, bearing

on the amount and revenue of increased toll business coming to the defendant company in case the connection should be ordered.

Defendant with its 870 subscribers in Glenn County received from intercounty toll business in that county for the first three months of 1912, \$2,395.52.

For the same period the company received from its intercounty toll business in Tehama County, \$2,158.15.

By applying these returns to the 1,000 phones now served exclusively by the independent companies, a fairly accurate estimate could be secured as to the amount of business which may reasonably be expected from those 1,000 phones if connected with the defendant company.

At Healdsburg, which is served by the California Telephone and Light Company, which has long distance connections with the defendant company, the average toll receipt per station per month is 46.8 cents. In the Sacramento Valley district the average per year for each station owned by the defendant company in 1911 was \$10.12 or 84.3 cents per month. During the same period the average for all stations in the Sacramento Valley, including connecting and sub-licensed stations, was \$8.42 per year or 70.1 cents per station per month. The toll business originating from the Colusa County company from May, 1911, to April, 1912, was \$4,112.34 for 759 telephones, being an average of \$5.40 per phone per year or 45 cents per phone per month.

Mr. Prescott H. Coolidge, a witness called on behalf of defendant, testified that the effect of the proposed connection on defendant's local exchange business would be to "perpetuate an economic fallacy" by causing the useless duplication of plants. He stated that defendant would doubtlessly receive an increased toll revenue, but that this result would be produced at the expense of its exchange business. Mr. Lindstrom, the independent companies' engineer, testified (Transcript, page 306) that in his judgment the question would resolve itself into the survival of the fittest and that the superior service would win out in the end. He would not commit himself as to the effect of such connection on the number of local telephones of the defendant company further than to say that the company which gave the best local service would secure the business.

Defendant has insisted that to make the connection would be to give the use of a portion of its system to the independent companies and to that extent would deprive the defendant of the control of its own property and of the use of its property without due process of law. We find that this point is not well taken. If the connection were made, the defendant's property would remain under the exclusive control of the defendant and its operators. The operators of the independent companies would have no control over the defendant company's prop-

erty. The defendant company would be interfered with in its operation only to the same extent as would be true in case of the receipt of so much new business from any other source. The result would be analogous to that if the defendant company bought some independent company and then received so much new business from that company.

The only important contention of the defendant herein is as set out in the testimony of Mr. Coolidge, a witness called in the defendant's behalf, that to grant the relief prayed for by complainants would perpetuate an economic fallacy, because it would lead to duplication of facilities in the case of a natural monopoly. While we agree that as a general proposition the interest both of the public and of the consumers of a public utility, which is a natural monopoly, may be better served by one agency than by two, yet there are very important reservations which must be made from this statement. The only warrant for the existence of a monopoly of any sort must be found in the advantage to the consumers and patrons of such monopoly. The reason why it is ordinarily believed that competition between natural monopolies is advantageous for the patrons of such monopolies is the fact that following such competition there is usually a reduction of rates and an improvement of service. Whenever humanity finds that one experience is invariably followed chronologically by another, humanity is inclined to believe that the second experience is the result of the first. That such is not the fact may often be demonstrated. The lower rates and more adequate service which follow competition between natural monopolies are rates and service which demonstrably could have been afforded by the monopoly without competition, unless the lower rates and improved service which follow such competition are of a character which the agency according them cannot afford to give. In short, when we find that a power company, for instance, lowers a rate when a competitor comes into a field, or improves its service, we can readily see that such power company could have lowered its rate before the competitor appeared, and it likewise appears that it could have legitimately made it even lower before the competitor appeared than it now voluntarily accords under competition. Before the competitor appeared it did not have to divide its consumers with any one. A reduction of rates of a natural monopoly and improvement of service under competition is an indication of one of two things, either that the rates were too high and the service not good enough before the competition arose, or that the rates are made too low and the service too good for the price under the stress of the competition. The former result could and should have been brought about without competition; the second result cannot be permanently maintained even under competition unless the utility according too low a rate is charging too high a rate elsewhere. The common practice, of course, is to make the rate too low and drive

out the competitor and after the competitor is eliminated or a combination effected, to raise the rate and recoup for losses attendant upon the rate war. We consider it bordering very much on effrontery for a public utility to urge that it is an economic fallacy to duplicate facilities, unless such utility has accorded to the public the advantage to which the elimination of duplication is supposed to entitle it. In this case it was testified by Mr. Coolidge, witness for the defendant, that when the company which he represents absorbed its opposing companies in Oakland and San Francisco, and thereby eliminated at least in part the economic fallacy, it actually reduced the number of employees used to serve the public of these cities while the competition existed. It is hard to persuade the public that an economic fallacy such as here under consideration is not as to it, the public, a good thing, when as a matter of fact when the economic fallacy was inflicted upon them their condition was better than either before or after the existence of such economic fallacy. No public utility, or no other monopoly as far as that is concerned, can ever justify, nor should it be able so to do, its existence as a monopoly on the theory of an advantage to its patrons which it does not accord.

In the case before us, however, we do not admit that granting the relief which the complainants ask will produce an economic fallacy even under the defendant's theory. The major portion of the duplication which exists, and particularly that in the rural districts, was brought about by the failure of the defendant company adequately to serve the public. The duplication now exists, and the granting of the application, instead of bringing about duplication, will minimize the effect of it. In granting this application we desire to reassert the policy which was laid down in the case of *Pacific Gas and Electric Company vs. Great Western Power Company*, decided by this Commission on June 16, 1912, to the effect that where a utility adequately serves the public at reasonable rates and the territory is completely served, this Commission's inclination will be to permit such utility, if it be a natural monopoly such as a telephone or lighting company, to hold its field free from competition, but that failure so to do will result in this Commission's permitting competition when a competitor applies. We find that the defendant herein has not adequately served the public in the territory in question, and that such failure on the part of the defendant has directly brought about and called into being the independent companies which now desire this connection. And we desire to warn the defendant that in order to maintain and justify a monopoly in any portion of the State it must accord as good, if not better, service when competition is not imminent as it can afford to furnish under competition. The reduction in the number of employees when competition is eliminated is the very oppo-



site from what this company should do, and we believe that such a proceeding is absolutely unwarranted. We, therefore, are of the opinion that no duplication will be brought about by reason of this order, and hence no economic fallacy produced, and we are further of the opinion that the duplication that already exists is the direct result of the default on the part of defendant in the adequate performance of its duty.

We submit the following form of order:

**ORDER.**

Tehama County Telephone Company and Glenn County Telephone Company having filed with this Commission their respective complaints against The Pacific Telephone and Telegraph Company requesting an order of this Commission for a physical connection between the lines of complainant and defendant companies, and for the establishment of through routes and joint rates, tolls, and charges as specified in said complaints, and said proceedings having been consolidated for hearing and a public hearing having been duly held thereon, and evidence having been introduced by all parties to said proceedings, and the Railroad Commission being fully advised in the premises, we hereby, in reliance on the evidence in this case, make the following findings of fact:

1. We find as a fact that a physical connection can reasonably be made between the lines of the defendant company and the lines of the complainant independent telephone companies, between their respective exchanges in Red Bluff and Willows, and that the lines of these companies can be made to form a continuous line of communication by the construction and maintenance between and in said respective exchanges of suitable connections for the transfer of messages or conversations.

2. We find as a fact that public convenience and necessity will be subserved by such connections.

3. We find as a fact that the companies parties to these proceedings have failed to establish joint rates, tolls or charges for service by or over their lines and that joint rates, tolls, and charges ought to be established to the extent hereinafter indicated.

4. We find as a fact that the purpose for which these connections are desired and herein ordered, is not primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, but rather that the purpose is to secure the transmission of long distance or toll messages and conversations from a point in one city or town or county to a point in another city or town or county to the extent hereinafter indicated.

Basing our order upon the foregoing findings and the further findings contained in the opinion which precedes this order,

*It is hereby ordered* as follows:

1. That a physical connection be established between the telephone

exchanges of the Tehama County Telephone Company and The Pacific Telephone and Telegraph Company in the city of Red Bluff, California.

2. That a physical connection be established between the telephone exchanges of the Glenn County Telephone Company and The Pacific Telephone and Telegraph Company in the city of Willows, California.

3. That through routes be established over said connections for the purpose of conveying long distance or toll messages and conversations to and from the lines of complainants in Tehama and Glenn counties, in California, from and to the lines of defendant in other counties in the State of California, not to cover the transmission of messages between points within Tehama County or points within Glenn County, or between points in Glenn and Tehama counties, and that this order shall apply only to California state business.

4. That joint rates, tolls and charges be made and used, observed and in force in the future over said through routes, these rates, tolls, and charges to be the same as the rates, tolls, and charges now or hereafter to be established between the points affected, respectively, in Tehama or Glenn counties and other points, as affected, in the State of California, on the lines of defendant company. If the companies cannot agree upon a division between them of the joint rates, tolls or charges herein established, they shall so notify the Commission within twenty days of the date of this order, whereupon the Commission will proceed to establish such divisions by supplemental order.

5. That the cost of installing the physical connections shall be borne entirely by the complainant companies.

6. That the companies are directed to agree, if possible, upon the rules and regulations to govern the use of said physical connections and the transmission and transfer of messages and conversations over the same. If the companies cannot agree upon such rules and regulations, they shall notify the Commission within twenty days of the date of this order, whereupon the Commission will establish such rules and regulations by supplemental order.

7. This order shall be complied with within thirty (30) days from its date.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of January, 1913.

## DECISION No. 426.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA GAS COMPANY, FOR AN ORDER AUTHORIZING THE ISSUE OF PREFERRED STOCK OF THE PAR VALUE OF THIRTY THOUSAND DOLLARS FOR THE PURPOSE OF PAYING ITS ORGANIZATION EXPENSES.

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Application No. 231.

*Decided January 30, 1913.*

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*Held*, With regard to allowance of capital stock for promoter's services and organization expenses, such expenses, if honestly and wisely incurred, are as necessary to the success of a public utility and are as properly subjects of capitalization as the cost of the component parts of the utility's physical plant or system, and that the same should be paid for in cash where possible at their reasonable value to the utility. Wherever possible, the moneys actually spent on these items should be ascertained and reimbursement made for them. While it is not always easy to estimate the value of a promoter's services, the inquiry should be made as to the amount of time which he has devoted to the organization of the utility and to the reasonable value of work such as that which he performed during that time. A public authority, in estimating the value of such services, should be liberal so that men of ability may be attracted to the development of new utility enterprises where needed for the development of the State. It may be well that, in addition to a reasonable compensation for the time devoted to the work, the promoter should be allowed an additional remuneration to compensate him for his risk of failure and the use of such money as he may have invested in the organization and promotion of the enterprise.

*Held*, With regard to an item of expenditure made in payment of fees for obtaining authorizations to the issue of bonds, such organization expense cannot be allowed for the reason that if it were allowed, applicant would have received, by so much less than the minimum price of 80 cents on the dollar, for which it was authorized to sell and has contracted to sell, most of its authorized bonds and preferred stock.

*Lester G. Burnett*, for Applicant.

## REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application for authority to issue 6 per cent preferred stock of the par value of \$30,000 to pay applicant's organization expenses.

Applicant was incorporated under the laws of California on January 8, 1912. Since that date it has acquired the property of Home Gas Company of Porterville and of Consolidated Heat, Light and Power Company, which latter company supplies Visalia and Tulare with gas. Applicant proposes to produce at its main plant in Visalia a supply of gas sufficient for Visalia, Tulare, Exeter, Lindsay and Porterville, and

the intervening territory. Transmission lines are to be built between Visalia, Exeter, Lindsay, and Porterville, distribution systems are to be constructed in Lindsay and Exeter, improvements are to be made to the plant in Visalia, and additions are to be made to the distributing systems in Visalia, Tulare and Porterville. Applicant intends to make service connections free and to conduct an active canvass for business in the entire territory.

In pursuance of these purposes, this Commission has heretofore authorized the issue by applicant of certain bonds and preferred stock. Prior to March 23, 1912, applicant issued preferred stock of the par value of \$6,500 to citizens of Lindsay at par and issued preferred stock of the par value of \$15,000 to General Operating and Construction Company on a construction contract on which nothing has been done or will be done by the latter company. Applicant also issued for the same consideration, which has failed, its entire authorized issue of common stock, amounting to a par value of \$50,000, which stock has now been made by endorsement non-transferable under an order of this Commission. The amount of bonds and preferred stock so authorized or issued is as follows:

|  | Bonds.       | Preferred stock. |
|--|--------------|------------------|
| Issue to General Operating and Construction Company..... |              | \$15,000 00      |
| Home Gas Company of Porterville purchase.....            | \$31,000 00  | 28,500 00        |
| Issue to citizens of Lindsay.....                        |              | 6,500 00         |
| Improvements at Porterville.....                         | 7,000 00     | 5,300 00         |
| Transmission line Porterville to Lindsay.....            | 24,000 00    | 13,800 00        |
| Transmission line Lindsay to Exeter.....                 | 13,000 00    | 8,300 00         |
| Distributing system in Lindsay.....                      | 14,000 00    | 8,400 00         |
| Distributing system in Exeter.....                       | 10,000 00    | 5,700 00         |
| Consolidated Heat, Light and Power Company purchase..... | 119,000 00   | 75,500 00        |
| Transmission line Exeter to Visalia.....                 | 20,000 00    | 11,800 00        |
| Improvements Visalia and Tulare.....                     | 12,000 00    | 7,400 00         |
|  | \$250,000 00 | \$186,200 00     |

Of said bonds and preferred stock there were issued on December 30, 1912, bonds of the face value of \$150,000 and preferred stock of the par value of \$125,500. Applicant avers that it has contracted to sell a total of \$250,000 face value of bonds and \$157,300 par value of its preferred capital stock, that it is proceeding rapidly to install the contemplated improvements and extensions and that the consolidation effected by applicant will result in furnishing gas service to a largely increased territory and in rendering better service to the entire territory heretofore served, with a possible ultimate reduction in rates.

Applicant now asks for authority to issue its 6 per cent preferred

stock in the par value of \$30,000 to meet the following organization and promotion expenses:

|   |             |
|---|-------------|
| Wm. R. Staats & Co., <i>in re</i> bond issue.....               | \$1,000 00  |
| Engineers' fees .....   | 2,100 00    |
| Attorneys' fees .....   | 2,150 00    |
| Printing, newspapers .....                                      | 600 00      |
| Printing, bonds, stock certificates, trust deeds, etc.....      | 1,876 00    |
| Trustee's fees, Los Angeles Trust and Savings Bank.....         | 750 00      |
| Salaries and office expenses, December, 1911-December, 1912.... | 7,200 00    |
| Railroad Commission bond issue fees.....                        | 500 00      |
| Traveling expenses .....  | 1,500 00    |
| Incorporation and miscellaneous expenses.....                   | 700 00      |
|   | <hr/>       |
|   | \$18,376 00 |
| Add for organization and promotion fees.....                    | 5,624 00    |
|   | <hr/>       |
|   | \$24,000 00 |
| Preferred stock at 80 per cent.....                             | 30,000 00   |

Applicant asks that this Commission recognize the issue of preferred stock in the par value of \$15,000 heretofore issued to General Operating and Construction Company and authorize the issue of an additional \$15,000 of preferred stock. Applicant in its petition alleges that if the order is made as prayed for, Central California Gas Company will be charged with no organization expenses or fees for services rendered in connection with organization other than those hereinbefore set forth and that if additional organization expense arises it shall be considered and included in the organization expenses and fees provided for in the order.

In connection with this application, this Commission directed its department of statistics and accounts to make a careful examination into the financial condition of applicant and particularly into the items hereinbefore submitted as organization expenses. Because of the very unsatisfactory condition of the books of applicant's predecessors, the examination has not been completed until now. From this examination, the following facts appear in connection with the items submitted as organization expenses: The fee of Wm. R. Staats & Co. includes the services of accountants, engineers and attorneys in examining applicant's property in connection with its bond issue. The engineers' fees are for plans and specifications for applicant's proposed improvements and extensions, valuations of the property and appearances at hearings before this Commission. The attorneys' fees are for services in connection with applicant's incorporation and appearances before this Commission. The newspaper printing item covers principally printing of franchise applications before the local authorities and also a small sum for the printing of notices of hearings before this Commission. For items totaling \$237.85 no receipts were produced. The item of printing of bonds, stock certificates, trust deeds, etc., should be increased to \$1,952.32. The item of trustee's fee was accounted for with the exception of \$14.40; the chief elements of this item are fees of \$500 for

acceptance of trust and \$100 for burning 600 bonds. The item of \$7,200 for salaries and office expenses includes a claim of C. S. S. Forney, the promoter, of \$6,000, being a salary of \$500 per month for a year, and items for rent, stenographer and telephone for an office in Los Angeles. The item of \$500 for Railroad Commission fees was paid as provided by law for certificates authorizing the issue of securities. The item of traveling expenses was not supported by any vouchers. It represents trips of Mr. Forney between Los Angeles and San Francisco, automobile hire and similar undefined expenses. The item for incorporation and miscellaneous expenses was accounted for with the exception of \$63.13. The item for organization and promotion fees is an estimate to balance and is alleged to represent the promoter's risks, interest on moneys advanced and kindred items. In this connection we would draw attention to the fact that of the list of items submitted, only \$3,697.04 seem to have been paid.

The item for bond expense can not be allowed, for the reason that if it were allowed applicant would have received by so much less than the minimum price of 80 cents on the dollar for which it was authorized to sell and has contracted to sell most of its authorized bonds and preferred stock.

Applicant's table, reconstructed so as to show items accounted for, and somewhat rearranged, reads as follows:

|   |             |
|---|-------------|
| Engineers' fees -----                                       | \$2,100 00  |
| Attorneys' fees -----                                       | 2,150 00    |
| Printing, newspapers -----                                  | 362 15      |
| Printing, bonds, stock certificates, trust deeds, etc.----- | 1,952 32    |
| Trustee's fees -----  | 735 60      |
| Office expenses, rent, stenographer, telephone.-----        | 1,200 00    |
| Railroad Commission fees-----                               | 500 00      |
| Incorporation and miscellaneous expenses-----               | 636 87      |
|   | <hr/>       |
|   | \$9,636 94  |
| C. S. S. Forney's salary claim-----                         | 6,000 00    |
| C. S. S. Forney's traveling expenses claim-----             | 1,500 00    |
| C. S. S. Forney's organization and promotion claim-----     | 5,624 00    |
|   | <hr/>       |
|   | \$22,760 94 |

The Commission has analyzed the revenues and expenses of the companies which were consolidated into applicant, for the year ending December 31, 1912, and has taken into consideration the possible development of the coming year, to ascertain whether it may safely authorize the issue of any additional preferred stock at the present time. While the Commission is not certain that applicant will be able, after meeting the interest on its bonds and setting aside a proper sum for depreciation, to pay 6 per cent on its preferred stock, issued and to be issued. the Commission is of the opinion that the issue of the \$12,500 additional preferred stock herein authorized, with a possible maximum interest requirement of \$750 per annum will not affect the result materially either way.

The Commission is of the opinion that promotion and organization expenses, honestly and wisely incurred, are as necessary to the success of a public utility and are as properly subjects of capitalization as the cost of the component parts of the utility's physical plant or system, and that the same should be paid for, in cash, where possible, at their reasonable value to the utility. Wherever possible, the moneys actually spent on these items should be ascertained and reimbursement made for them. While it is not always easy to estimate the value of a promoter's services, inquiry should be made as to the amount of time which he has devoted to the organization of the utility and to the reasonable value of work such as that which he performed during that time. A public authority, in estimating the value of such services, should be liberal, so that men of ability may be attracted to the development of new utility enterprises where needed for the development of the State. The need for a liberal policy in this regard is particularly apparent in states like California, in which there is still a wide field for legitimate new public utility development. It may well be that in addition to a reasonable compensation for the time devoted to the work, the promoter should be allowed an additional remuneration to compensate him for his risk of failure and the use of such money as he may have invested in the organization and promotion of the enterprise. In this, as in other respects, this Commission believes that the State of California should deal liberally with those who, by the establishment of utility enterprises, are aiding in the legitimate development of the State.

In the case now under consideration, it will be noted that some \$13,124, or something over one half of the total claimed, is for the time and traveling expenses of Mr. Forney, the promoter, and for organization and promotion fees, by which the applicant means the risk taken and interest for the use of such moneys as have been advanced. After mature consideration, taking into consideration the total amount involved, the economic benefits which may reasonably be expected to accrue from the applicant's operations, the development of new territory which has not hitherto been supplied with gas and the time devoted to the enterprise by the promoter, we have reached the conclusion that the amount which may properly be allowed for this item is \$12,000, being \$1,000 per month for the twelve months during the organization period. We shall also allow \$363.06 for items as to which expense was incurred, but as to which no receipts are on hand. This will make a total authorization of \$22,000. At the price of 80 per cent of par, at which price applicant expects to sell its preferred stock, it will take stock of the par value of \$27,500 to yield the sum so authorized. As preferred stock of the par value of \$15,000 has already been issued to General Operating and Construction Company for organization

expenses, the additional amount which may be issued under this authorization will be \$12,500. It will be understood, of course, that this application is decided on its own particular facts and that the decision herein with reference to the amount allowed for organization and promotion expenses will not be conclusive on the Commission in any other application.

I submit herewith the following form of order:

**ORDER.**

Central California Gas Company having applied to the Railroad Commission for the consent of the Commission to the issuance by said company of its 6 per cent preferred capital stock to the amount of \$15,000, par value, and for an approval of its first issue of preferred stock in the sum of \$15,000, made prior to March 23, 1912, and a hearing having been duly held upon said application, and the Commission finding that the purposes for which said stock is to be issued and approved are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that Central California Gas Company be and the same is hereby authorized to issue its 6 per cent preferred stock to the amount of \$12,500, par value, and the issue by said company of preferred stock in the par value of \$15,000 heretofore issued to General Operating and Construction Company is hereby approved, on the following conditions and not otherwise, to wit:

1. Central California Gas Company shall sell said preferred stock so as to net said company not less than 80 per cent of the par value thereof.

2. The proceeds from the sale of such stock shall be applied only to the following purposes, that is to say: for the payment in full of all the expenses of organizing and promoting said Central California Gas Company, the items of expenditure being set out in the opinion which precedes this order.

3. Central California Gas Company shall henceforth be charged with no organization or promotion expenses other than those which are to be paid by the issue of the stock hereby authorized. If additional organization or promotion expenses arise, they shall be considered as included in the organization and promotion expenses and fees provided for in this order.

4. Central California Gas Company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the capital stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale of said capital stock during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys,



all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

5. The authority hereby given to issue such capital stock shall apply only to capital stock issued by Central California Gas Company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of January, 1913.

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DECISION No. 427.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES GAS AND ELECTRIC CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED TO IT BY ORDINANCE NO. 319, NEW SERIES, OF THE COUNTY OF LOS ANGELES.

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Application No. 362.

*Decided January 30, 1913.*

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REPORT OF THE COMMISSION.

Los Angeles Gas and Electric Corporation having made application to the Railroad Commission of the State of California for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the county of Los Angeles in its Ordinance No. 319, new series, adopted January 13, 1913, by which ordinance applicant is given the right to lay, maintain and operate a pipe line for the purpose of carrying therein natural gas or artificial gas under and along certain highways in the county of Los Angeles; and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by Los Angeles Gas and Electric Corporation of the rights and privileges granted to said corporation by the county of Los Angeles in its Ordinance No. 319, new series.

By order of the Railroad Commission.

Dated at San Francisco, California, this thirtieth day of January, 1913.

## DECISION No. 428.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS RIALTO STREET, CITY OF SAN BERNARDINO, SAN BERNARDINO COUNTY, CALIFORNIA.

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Application No. 383.

*Decided January 30, 1913.*

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## REPORT OF THE COMMISSION.

Southern Pacific Company, a corporation, having on January 29, 1913, filed with the Commission an application for permission to construct a spur track at grade across Rialto street, city of San Bernardino, San Bernardino County, California, as hereinafter indicated; and it appearing to the Commission that this is not a case in which a public hearing is necessary; that applicant has secured the necessary franchise or permit from board of trustees of said city of San Bernardino; and it further appearing that it is not reasonable nor practicable to avoid a grade crossing with said street; and that the application should be granted subject to the conditions hereinafter specified,

*It is hereby ordered* that permission be hereby granted Southern Pacific Company to construct a spur track at grade across Rialto street, said city of San Bernardino, between E street and F street, as shown by the map attached to the application and subject to the following conditions, namely:

(1) The entire expense of constructing the crossing, together with the cost of its maintenance hereafter in good and first class condition for the safe and convenient use of the public, shall be borne by applicant.

(2) Applicant shall provide the necessary plank or guard rails for said crossing and shall construct same of a width not less than twenty-four (24) feet, sufficient to accommodate road traffic. Said crossing shall be constructed with grades of approach not exceeding six (6) per cent and shall be ballasted with stone or gravel ballast to a depth of not less than six (6) inches.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

Dated at San Francisco, California, this thirtieth day of January, 1913.

Decision No. 429, grade crossing; not printed. See end of volume.

DECISION No. 430.

IN THE MATTER OF THE APPLICATION OF FARMERS' WAREHOUSE COMPANY FOR AN ORDER AUTHORIZING THE APPLICANT TO ISSUE SIX HUNDRED AND SIXTY-FIVE SHARES OF ITS CAPITAL STOCK AT PAR AND CONFIRMING THE ACTION OF SAID COMPANY TAKEN JULY 1, 1912, PURPORTING TO ISSUE SAID STOCK.

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Application No. 311.

*Decided January 30, 1913.*

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Applicant is engaged in a business which is partly public utility and partly private.

As a merchant, it uses its free capital in the buying of produce which is thereafter sold at a profit, at which time the capital invested in such produce is released and again becomes available for subsequent similar investments. The capital stock for which approval of issue is sought was actually issued July 1, 1912, without the consent of the Commission and sold at par for cash. The proceeds from the sale are intact and represented either by cash on hand or property which is held for sale, and are now desired to be used in the merchandise part of the business.

A strict construction of section 52 of the Public Utilities Act would prevent a combination of a private business and a public utility business under one corporate ownership, for if it is held that compliance with the statute only permits such enterprise to acquire money from stocks or bonds for the public utility purposes contemplated by the statute, such construction will make it impossible for a private business to be carried on. A reasonable construction of the statute will permit, even in the case of bonds, a disposition of the proceeds of sales of such bonds of companies such as the applicant for purposes which are not public utility purposes. The utility portion of the business should not, of course, be burdened with an unreasonable part of the expense of the entire business, and it should likewise be accorded all of the revenue which is properly the result of the public utility business. If this be done, so far as stock issues are concerned at least, it would seem that the spirit of the Public Utilities Act would not be departed from by sanctioning an issue of stock such as the one here considered without requiring the proceeds of such stock to be devoted to public utility purposes.

*Held*, That the application be granted and that the proceeds from the sale of the capital stock be used in the general business of applicant and in accord with any of the purposes for which such proceeds may be used under the terms of its articles of incorporation, except for public utility purposes; *held*, such authorization is not to be construed as meaning that when proceeds of sales of stock of such corporations are desired to be used in the public utility part of the business, that use of such proceeds is not restricted to the purposes set out in the Public Utilities Act.

*George E. Farrand*, for Applicant.

## REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

The applicant herein is a corporation engaged in conducting a general warehouse and storage business, including milling, cleaning and grading, buying, selling and exchanging grain, farm products and other kinds of merchandise. It has a warehouse and milling plant at Huntington Beach, Sawtelle and Los Angeles, and a warehouse and wharf at Hueneme, Ventura County, California. Under the provisions of its articles of incorporation it is empowered to perform both a public utility business of wharfinger and warehouseman and a private business of grain and produce merchant. Applicant's original articles of incorporation authorized a capital stock of \$50,000, divided into 500 shares of the par value of \$100 each. On May 6, 1910, the authorized capital stock was increased to \$150,000, divided into 1,500 shares of the par value of \$100 each. All of applicant's stock is common. Prior to the passage of the Public Utilities Act, 835 shares were issued and outstanding for which par had been received.

Applicant states that on July 1, 1912, "and prior to the actual knowledge by applicant that the Public Utilities Act of California had altered its right to issue stock as theretofore exercised by it," it issued the balance of its capital stock, consisting of 665 shares. This stock was pro-rated among the stockholders of record on that date and sold to them at \$100 per share, and the company has received in cash therefor \$66,500. Applicant now asks that this Commission authorize it to issue the 665 shares of stock and confirm its action taken on July 1, 1912, in purporting to issue such stock.

There is no question in my mind that the transaction here under consideration should be approved by this Commission. This enterprise sold all of its stock at par and received cash therefor, which was all turned into the treasury of the company. The Commission certainly in the first instance would approve such a proceeding under the facts herein stated, and such being the case there certainly would be no warrant for withholding approval of such an action on the part of the company made through mistake, as I am convinced was here the case. The prompt and voluntary application on the part of this company to this Commission is additional evidence of its good faith. The only difficulty, however, is in the disposition of the proceeds, and this is a difficulty which will be met where we are dealing with these hybrid organizations engaged in a business which is partly public utility and partly private. The Public Utilities Act (section 52b) provides that a public utility "may issue stock and stock certificates \* \* \* for the following purposes and no other, namely, for the acquisition of property, or for the construction, completion, extension or improvement of

its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stock or stock certificates or bonds, notes or other evidences of indebtedness of such public utility." This language of the statute, of course, has in contemplation a public utility business and has outlined the purposes for which the proceeds from stock may be used. In the case before us, however, the applicant in addition to being a public utility is a merchant, and as such merchant uses its free capital in the buying of produce which is thereafter to be sold at a profit, at which time the capital invested in such produce will be released and again available for subsequent similar investments. Such has been the disposition of the \$66,500 acquired from the sale of the capital stock. It has not been permanently invested, but is now, according to the testimony in the case, entirely intact and represented either by cash on hand or property which is held for sale.

A strict construction of the section of the Public Utilities Act here in question would prevent a combination of a private business and a public utility business under one corporate ownership, for if we hold that compliance with the statute only permits such enterprise to acquire money from stocks or bonds for the public utility purposes contemplated by the statute we, of course, will make it impossible for a private business to be carried on. I do not believe it is necessary to go as far as this, and that a reasonable construction of the statute will permit even in the case of bonds a disposition of the proceeds of sales of such bonds of companies such as the applicant, for purposes which are not public utility purposes. It is not, however, necessary to decide the bond question in this case, for here we are dealing merely with stocks, and the issue of such stocks does not, of course, create a lien against the property of the corporation while the issue of bonds may create a lien upon all the property, both public utility and otherwise, of the applicant. The primary purpose of the Public Utilities Act is to insure adequate service at reasonable rates by the utility. In order to bring about these results it is necessary to prevent over-capitalization or over-bonding, and likewise to prevent a diversion of funds of the utility to purposes foreign to the utility. If we grant that a corporation organized for utility and other purposes may devote the proceeds of stock to that part of its business which is not devoted to the public utility—and I do not see how we can escape this conclusion—it immediately appears that great care must be taken to prevent the burdening of the utility business in favor of the private business of the corporation. If, however, the property devoted to utility business can be segregated, as is the case here, when rates are to be considered and a determination had of the

value of such property for rate fixing purposes, it would seem that the matter of financing of the entire enterprise becomes immaterial so long as such financial operation does not endanger the solvency or unduly burden the entire business. The utility portion of the business should not, of course, be burdened with an unreasonable part of the expense of the entire business, and it should likewise be accorded all of the revenue which is properly the result of the public utility business. If this be done, so far as stock issues are concerned at least, it would seem that the spirit of the Public Utilities Act would not be departed from by sanctioning an issue of stock such as the one here considered without requiring the proceeds of such stock to be devoted to public utility purposes. As I have already said, if this may not be done then these joint enterprises can not continue to operate, which latter result in some cases might be desirable, but in many is not, for many small utilities operate advantageously in conjunction with other kinds of business, the same facilities and the same employees being used jointly and so more economically for the two kinds of business. Of course, in authorizing this action by this corporation and holding that such a utility may devote the proceeds of stocks to that portion of its business that is not a utility, we should not be understood as holding that when proceeds of sales of stock of such corporations are desired to be used in the public utility part of the business that use of such proceeds is not restricted to the purposes set out in the Public Utilities Act. If, in the present case, this applicant should desire to devote any of the proceeds of this stock issue to purely public utility purposes, this Commission would be required under the law, to restrict such proceeds to the purposes set out in the Public Utilities Act. I, therefore, recommend that the application be granted and that the disposition of the proceeds as herein outlined be approved.

In this particular case the applicant has signified its intention of dividing its business so as to operate the utility business separately. We believe that such a plan is desirable, particularly where the utility feature of the business is of sufficient magnitude to allow it to be carried on as a separate business without excessive cost of operation.

When the plan of reorganization is presented to this Commission, the affairs of the company should be scrutinized to the end that the utility business shall not be burdened for the benefit of the private business.

I submit the following form or order:

**ORDER.**

Farmers' Warehouse Company having applied to this Commission for an order authorizing it to issue 665 shares of its capital stock, said stock to be sold at par in accordance with arrangements heretofore perfected in a purported issue of said stock, and a hearing having been held, and being fully advised in the premises,

*It is hereby ordered* that applicant be permitted to issue 665 shares of its capital stock and to sell the same at par, the proceeds thereof to be used in the general business of said applicant and in accord with any of the purposes for which such proceeds may be used under the terms of the articles of incorporation of said applicant except for public utility purposes.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this thirtieth day of January, 1913.

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DECISION No. 431.

IN THE MATTER OF THE APPLICATION OF MOULTON IRRIGATED LANDS COMPANY FOR AUTHORITY TO MORTGAGE ITS PROPERTY AND TO ISSUE BONDS IN THE AMOUNT OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS.

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Application No. 353.

*Decided January 30, 1913.*

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Applicant's articles of incorporation provide that it may sell water for irrigation and domestic purposes. Applicant is engaged in furnishing water to certain lessees of its lands under contract. Its application to the Commission was made at the behest of prospective purchasers of the bonds desired to be authorized and not because applicant regarded itself as a public utility.

Evidence being introduced to show that the value of the security was greatly in excess of the proposed bond issue, *held*, that the application be granted.

*John L. Hydner*, for Applicant.

*O. K. Cushing*, for First Federal Trust Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an application by Moulton Irrigated Lands Company for authority to create a mortgage upon 16,000 acres of land located in Colusa, Glenn, and Sutter counties, and to issue and sell thereunder ten-year serial six per cent first mortgage bonds in the sum of \$250,000.

Moulton Irrigated Lands Company is the owner of some 18,000 acres of land and is engaged principally in the business of cultivating, developing and selling these lands.

In its application, Moulton Irrigated Lands Company stated that it did not regard itself a public utility, but applied to the Railroad Commission nevertheless, for authority to issue the bonds because the First Federal Trust Company of San Francisco, California, the prospective purchaser of the bonds, had required that it obtain an authorization from the Railroad Commission before the trust company would accept the trust or take the bonds.

It appears, however, that the articles of incorporation of Moulton Irrigated Lands Company provide that it may sell water for irrigation and domestic purposes. Applicant is engaged in furnishing water to certain lessees of its lands under contract.

The applicant joined with the First Federal Trust Company in requesting that the Commission assume jurisdiction in this matter, and the law department of the Commission holding that the Commission had jurisdiction, a hearing was duly held.

The applicant placed its total indebtedness at approximately \$420,000. Of this amount \$225,000 consists of a mortgage indebtedness upon 16,000 acres of land in Colusa, Glenn, and Sutter counties. It is now proposed by applicant to issue bonds under a new mortgage upon this same tract of 16,000 acres of land and from the proceeds from the sale of said bonds to pay the indebtedness of \$225,000, and to apply the balance upon a note payable to the Bank of Hollister. Applicant has contracted to sell the bonds to the First Federal Trust Company.

Evidence was presented to show that the value of the 16,000 acres of land was greatly in excess of the proposed bond issue of \$250,000.

I recommend that the application be granted, and submit herewith the following order:

**ORDER.**

Moulton Irrigated Lands Company having applied to this Commission for an order authorizing the execution by said company of a mortgage on a tract or tracts of land embracing 16,000 acres in Colusa, Glenn, and Sutter counties, to First Federal Trust Company of San Francisco, to secure an issue of bonds in the sum of \$250,000; and Moulton Irrigated Lands Company having applied to this Commission for an order authorizing it to issue \$250,000 of six per cent ten-year serial bonds under that certain mortgage and deed of trust to the First Federal Trust Company filed by applicant with this Commission,

*It is hereby ordered* that Moulton Irrigated Lands Company be, and it is, hereby authorized to execute a mortgage to First Federal Trust Company of San Francisco, as applied for; and

*It is hereby ordered* that Moulton Irrigated Lands Company be, and



it is, hereby authorized to issue \$250,000 face value of principal of said bonds upon the following conditions, and not otherwise:

(1) Moulton Irrigated Lands Company shall sell the bonds herein authorized, to net said company not less than 95 per cent of the face value of the principal thereof and accrued interest thereon.

(2) The proceeds from the sale of said bonds shall be applied to the payment of the existing mortgage indebtedness due First Federal Trust Company of San Francisco in the sum of \$225,000, and the balance shall be applied upon the notes payable as listed by Moulton Irrigated Lands Company in its application before this Commission.

(3) Moulton Irrigated Lands Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds herein authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

(4) The proceeds from the sale of said bonds shall be used only as provided in the Public Utilities Act.

The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirty-first day of December, 1913.

The foregoing opinion and order are hereby ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of January, 1913.

Decisions Nos. 432 and 433, grade crossings; not printed. See end of volume.

DECISION No. 434.

IN THE MATTER OF THE APPLICATION OF LITTLE ROCK  
POWER AND WATER COMPANY, FOR PERMISSION  
AUTHORIZING IT TO ISSUE STOCKS AND BONDS.

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Application No. 288.

*Decided February 3, 1913.*

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REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicant having on January 27, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 3d day of February, 1913.

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DECISION No. 435.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN  
PACIFIC COMPANY TO INCREASE CHARGE FROM TWO  
DOLLARS AND FIFTY CENTS PER CAR TO TWENTY-FIVE  
CENTS PER TON OF TWO THOUSAND POUNDS, WITH A  
MINIMUM CHARGE OF FIVE DOLLARS PER CAR, FOR  
SWITCHING FREIGHT IN CARLOADS FROM TRANSFER  
TRACKS OF THE STATE BELT RAILWAY TO INDUSTRY  
TRACKS AND PRIVATE SIDINGS WITHIN THE SWITCH-  
ING LIMITS OF THE SOUTHERN PACIFIC COMPANY AT  
SAN FRANCISCO.

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Application No. 272.

*Decided February 4, 1913.*

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Applicant seeks to increase the charge for switching freight in carloads from the transfer tracks of the State Belt Railway to industry tracks and private sidings within the switching limits of the applicant from \$2.50 per car to 25 cents per ton, minimum charge of \$5.00 per car. Applicant is required to place an empty car switched from a more or less distant point to the transfer

track of the State Belt Railway and after the car has been loaded at an industry located on the Belt Railway, applicant must again switch this car loaded from the transfer track to the industry to which it is consigned. Under ordinary conditions, or if shippers avail themselves of the provisions of the demurrage rules of this Commission, the car would be out of service at least four days, provided it was handled with the greatest promptness, but generally it will be found that cars used for such business would be out of service from six to eight days. The situation would be entirely different if the State Belt Railway had a supply of cars and was in a position to furnish equipment for this service, as are the other connecting carriers of applicant.

*Held*, It is inconsistent to charge a minimum of \$7.50 per car for a movement from an industry on applicant's lines to an industry on the Belt Railway and but \$5.00 per car for a movement from an industry on the Belt road to an industry on applicant's lines, as in either event applicant must furnish equipment.

*Held*, Considering the character and extent of the movement of the freight under consideration and the facts as to furnishing and use of equipment, the application should be granted.

*George D. Squires*, for Applicant.

*Seth Mann* and *Wm. R. Wheeler*, for the San Francisco Chamber of Commerce.

#### REPORT OF THE COMMISSION.

*ESHLEMAN* and *LOVELAND*, *Commissioners*.

In this application, the Southern Pacific Company seeks to increase the charge for switching freight in carloads from the transfer tracks of the State Belt Railway to industry tracks and private sidings within the switching limits of the applicant from \$2.50 per car to 25 cents per ton, minimum charge \$5.00 per car.

The reasons advanced for this proposed change are:

*First*—To place traffic moving between industries on the Belt Railway and industries on the Southern Pacific Company's lines on the same basis as traffic moving between industries on the Santa Fe and the Southern Pacific Company, or the Western Pacific and the Southern Pacific Company.

*Second*—To provide the same charge on traffic moving from industries on the Belt Railway to industries on the Southern Pacific Company's lines as now applies in the reverse direction.

*Third*—That the rate asked for is a reasonable one for the service rendered.

The charge to-day for moving carload freight from an industry on the Santa Fe's line to an industry on the Southern Pacific Company's line is 25 cents per ton, with a minimum charge of \$5.00 per car for the originating line and \$2.50 per car for the delivering line. The charge of 25 cents per ton accruing to the originating line is based on the theory that the originating line furnishes the equipment and performs a greater service than the delivering carrier, and we find that with the exception of traffic moving from points on the State Belt Railway to industries located on the various lines, this reciprocal arrangement is uniform.

Under the present tariff provisions, a movement from points on the State Belt Railway to an industry located within the switching limits of the Southern Pacific Company's yards would be \$5.00 per car, \$2.50 accruing to each line. In the case of the State Belt Railway, however, the Southern Pacific Company performs all of the service which would ordinarily be performed had the traffic originated on its line; namely, that of furnishing equipment.

Without in any way passing on the reasonableness of a switching charge where a main line movement is involved, it seems to us that inequalities here exist for which there is no warrant. In the case covered by this application, the Southern Pacific Company is required to place an empty car switched from a more or less distant point to the transfer track of the State Belt Railway and after the car has been loaded at an industry located on the Belt Railway, the Southern Pacific Company must again switch this car loaded from the transfer track to the industry to which it is consigned.

Under ordinary conditions, or if shippers avail themselves of the provisions of the demurrage rules of this Commission, the car would be out of service at least four days, provided it was handled with the greatest promptness, but we believe generally it will be found that cars used for such business would be out of service from six to eight days. The situation would be entirely different if the State Belt Railway had a supply of cars and was in a position to furnish equipment for this service as are the other connecting carriers of the Southern Pacific Company.

It appears to us to be certainly inconsistent to charge a minimum of \$7.50 per car for a movement from an industry on the Southern Pacific to an industry on the Belt Railway and but \$5.00 per car for a movement from an industry on the Belt road to an industry on the Southern Pacific, as in either event the Southern Pacific must furnish equipment.

Considering the character and extent of the movement of freight under consideration and the facts as to furnishing and use of equipment as herein set forth, we find upon the evidence now available that the rate asked for is a reasonable rate.

While subsequent investigation may lead to a different conclusion, we are at present of the opinion that the application is reasonable and should be granted.

At the hearing of this application shippers of dried fruit from points on the Northwestern Pacific Railroad—which fruit was consigned to packing houses served by the Southern Pacific Company and which was subject to the charge of 25 cents per ton in addition to the State Belt Railway's charge, as per Item 212-1 of Terminal Tariff 230-G, C. R. C. 1260—protested against the provisions of this item. We believe this item should be amended to read \$2.50 per car for the reason that

in this case the Southern Pacific Company does not furnish the equipment and is put in the same position with reference to the Northwestern Pacific Railroad as any other connecting carrier in San Francisco.

The following order is recommended:

**ORDER.**

Application having been made by the Southern Pacific Company to increase the charges for switching freight, carloads, from transfer tracks of the State Belt Railway to industry tracks and private sidings within switching limits of that company in San Francisco from \$2.50 per car to 25 cents per ton, minimum charge \$5.00 per car, and a regular hearing having been held, and it having been found that the request is reasonable,

*It is hereby ordered* that the Southern Pacific Company be and it is hereby authorized to amend its terminal tariffs increasing the charge for switching freight in carloads from transfer tracks of the State Belt Railway to industry tracks and private sidings within the switching limits of that company in San Francisco from \$2.50 per car to 25 cents per ton, minimum charge \$5.00 per car.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco this 4th day of February, 1913.

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DECISION No. 436.

IN THE MATTER OF THE APPLICATION OF HENRY FISHER,  
PROPRIETOR AND OWNER OF NORTH SIDE WATER  
COMPANY, SO-CALLED, TO SELL THE PLANT OF SAID  
COMPANY TO THE CITY OF REDLANDS, AND OF SAID  
CITY TO PURCHASE SAID PROPERTY.

Application No. 394.

*Decided February 4, 1913.*

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Application for approval of sale to city of Redlands of a water system located within the city and used exclusively for supplying residents within the city, granted *ex parte*.

REPORT OF THE COMMISSION.

Henry Fisher, the proprietor and owner of the North Side Water Company, so-called, having filed with this Commission his application for authority to sell to the city of Redlands for the sum of five thousand

seven hundred and thirty-seven and 36/100 (\$5,737.36) dollars that certain water system known as the North Side Water Company, from which said system water has heretofore been furnished and supplied to persons living upon the Enterprise Tract, within the city of Redlands, and the city of Redlands having joined in said application, and it appearing to the Commission that the property of the said North Side Water Company is located entirely within the city of Redlands and that said company has not been supplying water to any person residing beyond or outside the city limits of Redlands, and that no public hearing is necessary in this case,

*It is hereby ordered* that said application be and the same is hereby granted.

Dated at San Francisco, California, this 4th day of February, 1913.

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DECISION No. 437.

IN THE MATTER OF THE APPLICATION OF THE FRUIT GROWERS OF THE STATE OF CALIFORNIA FOR REDUCTION IN DECIDUOUS FRUIT RATES, A DECREASE IN THE MINIMUM CARLOAD WEIGHT AND A REDUCED REFRIGERATION TARIFF.

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Application No. 39.

*Decided February 4, 1913.*

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Upon rehearing in this matter, the Commission decided to assist the fruit growers of California in presenting to the Interstate Commerce Commission their application for a reduction in the minimum carload weight of deciduous fruit moving from California in interstate commerce.

*R. D. Stephens*, for Applicants.

*C. W. Durbrow*, for Carriers.

REPORT OF THE COMMISSION.

LOVELAND, GORDON and THELEN, *Commissioners*.

This is a rehearing on the application of fruit growers of this State for the assistance of this Commission before the Interstate Commerce Commission in securing a reduction of the minimum carload weight on deciduous fruit moving from California, and also in securing a reduction in refrigeration rates.

Considerable additional evidence was introduced, and we are now in a position to act definitely in the matter of the minimum carload weight.

After a thorough review of the situation, we are of the opinion that a reduction should be made in the minimum carload weight on deciduous fruit moving from California in interstate traffic. We recommend that the Commission assist the fruit growers in the presentation of their petition to the Interstate Commerce Commission, and that the Commission do all in its power to secure for the fruit growers of this State the reduction in minimum carload weight on deciduous fruit rates to which the Commission believes them entitled.

With reference to refrigeration rates, while some evidence was introduced, we are of the opinion that this evidence is insufficient to enable us to reach a conclusion as to whether or not relief should be applied for. However, if applicants should embody the matter of refrigeration rates in the complaint which they contemplate filing with the Interstate Commerce Commission, and if this Commission should hereafter become convinced that relief should be granted in this matter, the Commission may also assist the fruit growers in presenting that feature of the case.

We recommend the following order:

**ORDER.**

The fruit growers of California having applied to this Commission for its assistance in presenting to the Interstate Commerce Commission their application for a reduction in the minimum carload weight of deciduous fruit moving from California in interstate commerce, and also for a reduction in the refrigeration rate, and a public hearing having been held on said application,

The Commission hereby expresses its decision to assist the fruit growers in the presentation of their petition as affects the minimum carload weight on deciduous fruit.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, this 4th day of February, 1913.

## DECISION No. 438.

IN THE MATTER OF THE APPLICATION OF ARROWHEAD  
RESERVOIR AND POWER COMPANY FOR AN ORDER  
AUTHORIZING THE ISSUE OF FOUR MILLION DOLLARS  
BONDS.

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Application No. 218.

*Decided February 4, 1913.*

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Applicant asks approval to the issue of bonds and to the use of the proceeds thereof in completing the development and construction of a water system. Suits are now pending in the courts attacking the claims of applicant herein to the water of the Mojave River, said water being embraced within applicant's development scheme.

*Held*, If said suits be determined adversely to applicant such determination will destroy the usefulness of its property. Under such circumstances, the Commission would not be justified in authorizing the issue of securities which will be a lien upon property of a corporation which property may or may not have value, dependent upon the determination of another tribunal. Application denied without prejudice.

*Leonard & Surr*, for Applicant.

*Waters & Goodcell and Anderson & Anderson*, for protestant Appleton Land, Water and Power Company.

*Byron Waters*, for protestants W. H. Robinson, J. T. Bennette, Peter Herlick, Sam Rogers and Ida M. Holmes.

## REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

This application was filed on September 10, 1912, and certain amendments were thereafter filed on November 27, 1912. The hearing was held at San Bernardino on the twenty-seventh day of January, 1913, at which time the Appleton Land, Water and Power Company and W. H. Robinson, J. T. Bennette, Peter Herlick, Sam Rogers and Ida M. Holmes, owners of land riparian to the Mojave River, filed formal protests to the granting of the application, and at the hearing introduced evidence in support of said protests.

The applicant is engaged in constructing water works for the impounding and transmission of water for irrigation and development of power on the Northern slope of the San Bernardino range. It is the successor of the Arrowhead Reservoir Company which began the construction of its works in the early eighties for the purpose of storing the water on various tributaries to the Mojave River, and by means of tunnels transferring the water from the watershed of the Mojave River



to the San Bernardino side of the range for irrigation purposes. Work has been prosecuted on various tunnels and reservoir sites, and the Little Bear Valley reservoir dam is about 80 per cent completed. According to the testimony work was prosecuted intermittently up to 1907 when the Rancho Verde and the Mojave Land and Water Company owning property in the vicinity of Victorville commenced suit to prevent the development and diversion of this water, claiming that such development would deprive their land of the underground water on which they relied for irrigation. Up to the present time, according to the statements filed with this Commission, \$2,791,000 has been expended. How much of this has been expended wisely it is unnecessary to determine under my view of the case. Unquestionably, the expenditure of money on the abandoned tunnels, useful under the original plan but useless as that plan has been modified, and upon certain strengthening work upon the Little Bear Valley dam could not legitimately be charged against the consumers under the proposed enterprise as an asset to be considered when rates are to be fixed; nor could such expenditure be considered as an asset against which bonds might be issued. After eliminating what appears to be the amounts plainly expended unwisely, there would seem to be a substantial equity which together with the proceeds to be realized from the proposed issue of bonds would likely produce a property which would be adequate security for such bonds.

In addition to the protests made by riparian owners, an attack was made upon the stability of the Little Bear Valley dam.

I entertained these protests and allowed evidence to be adduced in support thereof on the theory, first, that if the expenditures which have been made have been made in producing a work which may not safely be expected to perform the functions for which it is constructed, such expenditures on such construction can not properly be good security for a mortgage; and, second, if the title to the water which is claimed by the applicant is not good the Commission may find itself, if it approves a bond issue in such a case, sponsor for an issue of bonds which is a lien upon the property of a corporation which has lost its most valuable asset. In fact, if it should be determined that this corporation has no right to impound the water on the headwaters of the Mojave River, the money expended in building dams and making tunnels would be absolutely wasted. While, of course, this Commission should not assume to pass upon questions of title over which it has no jurisdiction, yet the fact that suits are now pending in the Superior Court of San Bernardino County and the United States Circuit Court at Los Angeles attacking the claims of the applicant herein to the water of the Mojave River, leads me to conclude that there will at least be serious delay and possible failure of the enterprise.

It would be unfair, of course, to deny an application to issue securities merely because a protest had been filed against the granting of such application. Manifestly we should attempt at least to determine whether or not there is any substance to the protest, particularly when a question of title to the property is involved. It appears plainly from the evidence that there is a substantial conflict over the title to this water which, as has already been said, if it be determined adversely to the applicant will destroy the usefulness of its property. Under such circumstances it seems to me that the Commission would not be justified in authorizing the issue of securities which will be a lien upon property of a corporation which property may or may not have value, dependent upon the determination of another tribunal.

This makes it unnecessary to consider the other protest which alleges the unsafety of the dam.

I, therefore, recommend the following order:

**ORDER.**

Arrowhead Reservoir and Power Company having applied to this Commission for permission to issue \$4,000,000 five per cent bonds for the purpose of discharging certain outstanding obligations, and for the construction of properties, and a hearing having been held and various protests having been filed by riparian owners upon the Mojave River, upon the tributaries of which the applicant intends to impound water, and the question of title to such water being a matter that can not be determined by this Commission but which must await the decision of a court of competent jurisdiction,

*It is hereby ordered* that said application be denied without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of February, 1913.

## DECISION No. 439.

IN THE MATTER OF THE APPLICATION OF UNITED RAILROADS OF SAN FRANCISCO FOR PERMISSION TO ISSUE AND SELL TWO MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS SIX PER CENT FIVE-YEAR NOTES, THE PROCEEDS FROM THE SALE OF WHICH ARE TO BE APPLIED TOWARD THE PAYMENT AND DISCHARGE OF THREE MILLION DOLLARS OF THE SIX PER CENT BONDS OF THE MARKET STREET CABLE RAILWAY COMPANY AND THREE HUNDRED AND FIFTY THOUSAND DOLLARS OF THE SIX PER CENT BONDS OF THE PARK AND CLIFF HOUSE RAILWAY COMPANY, BOTH BOND ISSUES MATURING JANUARY 1, 1913.

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Application No. 283.

*Decided February 4, 1913.*

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Applicant asks for an order permitting it to issue and sell at 95 per cent five-year 6 per cent promissory notes in the amount of \$2,350,000, and to use the proceeds, together with applicant's sinking fund, stated to amount to \$1,200,000, to pay off \$3,000,000 face value of Market Street Cable Railway Company bonds and \$350,000 face value of Park and Cliff House Railway Company bonds, said promissory notes to be secured by pledge of \$2,150,000 face value of Market Street Railway Company bonds. Authority is asked in Application No. 284 for approval of issue of said bonds as collateral. The proceedings in these two applications were consolidated. Applicant failed to produce its books as required, but, in lieu thereof, offered statements made by auditors, which statements were alleged to have been compiled from the books, but which consisted of totals only and gave no details of how the totals were secured.

The Commission, through its auditing department, carefully examined the partial information furnished by applicant and not including the original books prior to the year 1912, and from such examination reached the following conclusions with reference to applicant's financial condition as bearing on this application:

1. That the provisions of applicant's trust deeds with reference to the establishment of sinking fund reserves have not been complied with.
2. That the United Railroads has exchanged with its owners their own promises to pay and has set them up in an account as sinking fund investments.
3. That a fictitious surplus or profit and loss account has been created.
4. That dividends have been paid out of such fictitious surplus to the detriment of the equity supporting the bonds.
5. That instead of setting up a heavy reserve to aid in retiring bonds which it now seems the company will be unable to pay at maturity, the company is continuing to pay out dividends.

In some cases in which the condition of a public utility at and prior to March 23, 1912, has not been such as would have been sanctioned by this Commission had it been empowered to pass upon the utility's securities, the Commission has nevertheless authorized the issue of new securities, but only in cases in which the issue of such new securities will not cast additional burdens upon the utility and in which the utility is not bankrupt. The Commission will not authorize the issue of additional securities in the two exceptions specified, for the reason that it is obvious that to permit the issuance of new securities by a utility which inevitably must be reorganized or go into the hands of a receiver will only result in loss to the people who invest in these securities. Having this policy in

view, the Commission insisted upon being fully advised as to the applicant's financial condition. If an examination of the original books which the company has refused to supply should reveal a different condition from that stated, the responsibility for the above conclusions, which inevitably must be drawn from the evidence secured, lies with the applicant because of its failure to submit its books for examination by the Commission. The evidence offered by applicant reviewed.

*Held*, That the application should be denied and that no favorable action will be taken by the Commission on any application presented by the United Railroads or its subsidiaries until the information demanded by the Commission has been furnished.

*Wm. M. Abbott*, for United Railroads.

*Goodfellow, Eels & Orrick*, for Rollins & Sons.

*E. P. E. Troy*, for Public Ownership Association.

#### REPORT OF THE COMMISSION.

This is an application for an order authorizing United Railroads of San Francisco to issue and sell \$2,350,000 face value 5-year promissory notes, bearing interest at the rate of 6 per cent per annum.

Applicant operates a total single track mileage of 267 miles of street car lines in the city of San Francisco and from the city of San Francisco to San Mateo.

Applicant is capitalized as follows:

|                            |                 |
|----------------------------|-----------------|
| <b>Bonds of applicant:</b> |                 |
| Authorized -----           | \$35,275,000 00 |
| Issued -----               | 25,334,000 00   |
| <b>Underlying bonds:</b>   |                 |
| Authorized -----           | 24,750,000 00   |
| Issued -----               | 14,591,000 00   |
| <b>Capital stock:</b>      |                 |
| Authorized, common -----   | \$18,800,000 00 |
| Issued -----               | 17,948,600 00   |
| <b>First preferred:</b>    |                 |
| Authorized -----           | 5,000,000 00    |
| Issued -----               | 5,000,000 00    |
| Preferred -----            | 20,000,000 00   |
| Issued -----               | 20,000,000 00   |
| <b>Total:</b>              |                 |
| Authorized -----           | 43,800,000 00   |
| Issued -----               | 42,948,600 00   |

Of the above amount of bonds of applicant, the company states that it has acquired for sinking fund, \$1,690,000 face value of bonds.

In addition to the above funded indebtedness, applicant owes the following:

|   |                       |
|---|-----------------------|
| Equipment notes, 6 per cent due June 15, 1913, to June 15, 1918, secured by 80 cars -----   | \$300,000 00          |
| Income notes, 6 per cent due July 1, 1912, to July 1, 1913, issued to United Railways Investment Company and deferred to dividends on first preferred stock ----- | 1,229,000 00          |
| Ten-year gold notes, 5 per cent due February 1, 1916, no security -----   | 1,000,000 00          |
| Promissory notes due on July 1, 1912, and August 19, 1912 -----   | 293,250 00            |
| Current liabilities -----   | 1,266,481 00          |
| <b>Total -----</b>  | <b>\$4,088,731 00</b> |

It was proposed in the application to sell the promissory notes asked to be authorized, for at least 95 per cent of their face and use the proceeds, with the sinking fund added, later agreed to amount to \$1,200,000, to pay off \$3,000,000 face value of Market Street Cable Railway Company bonds and \$350,000 face value of Park and Cliff House Railway Company bonds, all of which bonds were due and payable January 1, 1913. As security for the payment of the above mentioned promissory notes, applicant proposed to pledge \$2,150,000 face value of 5 per cent Market Street Railway Company bonds, the consent of the Railroad Commission for such issuance being asked for in Application No. 284, filed and heard with this application, and in addition it was proposed to pledge \$970,000 face value of San Francisco Electric Railways 5 per cent first mortgage bonds. These latter bonds were issued prior to March 23, 1912, and are in the hands of a representative of the United Railways Investment Company.

In some cases in which the condition of a public utility at and prior to March 23, 1912, has not been such as would have been sanctioned by this Commission had it been empowered to pass upon the utility's securities, the Commission has nevertheless authorized the issue of new securities, but only in cases in which the issue of such new securities will not cast additional burdens upon the utility and in which the utility is not bankrupt. The Commission will not authorize the issue of additional securities in the two exceptions specified, for the reason that it is obvious that to permit the issuance of new securities by a utility which inevitably must be reorganized or go into the hands of a receiver will only result in loss to the people who invest in these securities. Having this policy in view, the Commission insisted upon being fully advised as to the applicant's financial condition. Inasmuch as sufficient information was not produced at the initial hearing, a demand was made for the complete inspection of the books and accounts of the company. A full inspection of the minutes of the company was at first refused but later granted, but the only books of account applicant produced were those for the year 1912. It became necessary for the Commission to see the books preceding the year 1912, but the applicant's officials said that these books were at some unknown place in the east. The Commission made demand that these books be produced, but the company failed to comply with the Commission's order. In lieu of these books the applicant offered statements made by auditors, which statements were alleged to have been compiled from the books, but which consisted of totals only and gave no details of how the totals were secured.

The Commission, through its auditing department, has carefully examined the partial information furnished by applicant and not including the original books prior to the year 1912, and from such

examination has reached the following conclusions with reference to applicant's financial condition as bearing on this application:

1. That the provisions of applicant's trust deeds with reference to the establishment of sinking fund reserves have not been complied with.

2. That the United Railroads has exchanged with its owners their own promises to pay and has set them up in an account as sinking fund investments.

3. That a fictitious surplus or profit and loss account has been created.

4. That dividends have been paid out of such fictitious surplus to the detriment of the equity supporting the bonds.

5. That instead of setting up a heavy reserve to aid in retiring bonds which it now seems the company will be unable to pay at maturity, the company is continuing to pay out dividends.

It should be understood that the conclusions hereinbefore set out, have been reached on the partial information which has been submitted to the Commission, and that if an examination of the original books which the company has refused to supply should reveal a different condition, the responsibility for these conclusions, which we contend inevitably must be drawn from what evidence is before us, lies with the applicant because of its failure to submit its books for examination by the Commission.

It is an axiom that evidence suppressed is deemed to be adverse, and having in mind this axiom certainly the Commission is justified in concluding that the books which the applicant refuses to produce at least would not better its showing.

We have above set out five general conclusions, which, as we have stated, are conclusions drawn from the only source from which the Commission can draw conclusions in this case, namely, from the partial accounting made to this Commission at and subsequent to the hearing by the applicant.

Because of the desire of this Commission that it be made plainly to appear that the failure to grant this application is due entirely to the action of the company and that the conclusions hereinbefore set out are justified, a brief review of the evidence which the applicant has offered should be made.

The following appears from the minute book of applicant, an inspection of which was had:

On December 21, 1908, the common capital stock was reduced in the sum of \$1,200,000 and on February 9, 1909, this sum was credited to profit and loss. The common stock at that time had no market value and as a result of this transaction, a false surplus was set up, and if out of this false surplus any part of the regular yearly dividend of \$350,000 on the first preferred stock was paid, this was not only improper but illegal.

From the statements submitted by Mr. Calhoun, president of the United Railroads, the item "Cash Invested in Securities for Sinking Funds" in the amount of \$4,062,518.30, is credited to profit and loss account, or surplus. This seems to be the regular practice of applicant with regard to its sinking funds, and in essence means that having created a reserve for the sinking funds it was immediately taken out again and put in surplus, and may have been used for purposes foreign to the sinking funds.

The only evidence submitted to the Commission, other than the mere unsigned typewritten statements exhibited but not filed, of the condition of the various sinking funds of applicant, appears in the minute book in an entry dated January 25, 1912, which is a copy of a report made to the board of directors of the United Railroads of San Francisco by two of the directors, Charles Holbrook and Thornwell Mullally. In this report appears the following statement of securities found by these directors in the sinking fund:

"\$782,241.93 of United Railways Investment Company's 6 per cent serial notes of 1908, secured by 11,173 shares of first preferred stock of United Railroads of San Francisco with dividend warrant No. 9 and all subsequent warrants attached.

\$1,229,000 United Railways Investment Company's 20-year convertible gold debentures, pending printing and delivery of coupon bearing debentures, temporary debentures Nos. 1 to 1229, inclusive, for \$1.000 each, held in lieu thereof.

\$20,000 five-year 7 per cent promissory notes of Patrick Calhoun, dated May 23, 1911."

This makes a total of \$2,031,241.93 in securities of such a character as does not justify their becoming a part of the sinking funds. Such sinking funds should consist either of cash, bonds of the issue for which the fund was established, underlying bonds, or securities of such a character as to put the probability of their being converted into cash at face value beyond reasonable question.

Assuming that promissory notes under any condition are proper sinking fund securities, they can only be proper where they are so thoroughly secured that their permanent value is assured. As to the promissory notes and debentures of the United Railways Investment Company, the apparent security behind them is the earnings on the stock of the United Railroads of San Francisco, owned by this investment company, and as the directors of the United Railroads of San Francisco may withhold dividends at their pleasure, it is evident that it is within the power of applicant, at any time, to destroy or impair the security of these notes, and hence their value, unless the investment company has assets or income from other sources ample to give securities to these notes.

As to the income of the investment company, other than that derived from the United Railroads of San Francisco, no data has been furnished.

As to the \$20,000 promissory note of Mr. Calhoun there does not appear to be any security back of it, except the personal responsibility of the maker, and this, of course, is not a proper security to be found in a sinking fund. It is stated that this note has since been eliminated from the sinking funds.

In addition to the above, we find notes receivable, as shown by a minute entry of January 25, 1912, in a report made by the same directors as above noted, the following:

“\$56,080.26 of United Railways Investment Company's serial notes, maturing August 15, 1914, and August 15, 1915, respectively, secured by 801 shares of first preferred capital stock of United Railroads of San Francisco, with dividend warrant No. 9, and all subsequent warrants attached.

\$703,000 promissory notes of San Francisco Railway and Power Company, dated August 24, 1909, payable on demand, interest at 5 per cent per annum (interest paid to June 30, 1911), secured by 970 San Francisco Electric Railway 5 per cent mortgage bonds, of which 804 bonds are rehypothecated.”

The San Francisco Railway and Power Company is a subsidiary of the United Railways Investment Company.

There is nothing to show the value of these notes and in view of the close relationship of the makers of these notes and the United Railroads, evidence is necessary to show that they are something more than in effect promises of the gentlemen in control of these companies to pay themselves.

In the minutes of May 25, 1910, it appears that four years' "back salary" was voted to Patrick Calhoun, president of the United Railroads of San Francisco, in the sum of \$75,000 a year, or a total of \$300,000. No explanation is made of this item, but it at once suggests the necessity of a thorough investigation in order to determine the items claimed by applicant as operating expenses of the United Railroads over a series of years. This investigation is particularly necessary in view of the claims made by the officials of applicant that its net earnings, after deducting operating expenses, have been ample to provide for sinking fund requirements, pay interest on obligations, dividends on the first preferred stock of \$350,000 a year, and leave a surplus. Of course, the question of whether or not such a net earning has been made depends, among other things, upon the character of the items going to make up the operating expense account.

In the minutes of May 18, 1910, appears a resolution empowering the United Railroads to purchase from the United Railways Investment Company, \$1,229,000 of its 20-year convertible gold debentures and to



deliver in payment therefor, the notes of the United Railroads to the total amount of \$1,229,000. In this resolution it was provided that the president of the United Railroads, or his assistant, be authorized to sell these debentures of the United Railways Investment Company to the sinking funds of the Market Street Railway Company or its constituents, the Sutter Street Railway Company, at 95 per cent of their par value.

This is a very dubious transaction. In effect the United Railroads gives its notes in the sum of \$1,229,000 to the holder of its stock, the United Railways Investment Company, and the United Railways Investment Company in return gives its notes, or debentures, in the same amount of \$1,229,000 to the United Railroads. The United Railroads then turns these debentures of the United Railways Investment Company into the sinking funds.

The testimony of Mr. Black, given at the hearing, to the effect that this \$1,229,000 went into additions and improvements properly chargeable to capital account is not borne out by the facts, since it appears that instead of going into "additions and improvements" it went in the shape of promissory notes into the sinking fund.

From the minutes of August 16, 1912, it appears that the Railroad and Power Development Company, a subsidiary of the United Railways Investment Company, was indebted to the United Railroads in the sum of \$1,725,284.77, and on August 16th, a settlement was ratified by which the United Railroads accepted in payment of this sum of \$1,725,284.77, five promissory notes, or debentures of the Railroad and Power Development Company, payable five years from date, of the aggregate amount of \$873,884.77 and 8,514 shares of capital stock of the United Railroads of San Francisco. This is a transaction in a large amount, which seriously affects the assets of applicant and requires thorough investigation to determine the result on the financial condition of applicant.

In the minutes of August 16, 1912, appears a resolution declaring dividend No. 10, of \$200,000 on the preferred stock of the United Railroads, the dividend to be paid on January 15, 1913. This dividend is in addition to the dividend of \$350,000 regularly paid on the first preferred stock. It is the law, and is certainly sound practice, that dividends be only paid out of net surplus earnings, and the propriety of this proposed dividend No. 10, in view of the situation hereinabove presented, is questionable.

In addition to all that has heretofore been stated, applicant is burdened with approximately \$40,000,000 of outstanding bonds, and it is conceded that in 1927 when the issue of United Railroads 4 per cent bonds becomes due, there will be approximately \$20,000,000 face value of these bonds which the company will be unable to pay at that time, and in view of the fact that many of the important franchises of appli-

cant will expire at and within a few years after 1929, it can not be said that the financial condition of applicant is sound, unless it be shown that all of its outstanding obligations not only can, but will be paid at maturity, or at least at the time when many important franchises of applicant expire.

No such showing has been made to the Commission, and as the bondholders must rely upon the sinking fund provided for in the trust deed under which the United Railroads 4 per cent bonds are issued, and whatever physical value of property may exist at the time of the maturity of these bonds, in the judgment of this Commission, these bonds, at this time, are not certain of payment in full.

In order to safeguard the payment of the obligations of applicant when they fall due, a large part of the surplus income of applicant should be diverted to these securities and it appeals to this Commission as proper that the payment of dividends on the large amount of capital stock outstanding should be deferred to the security of these bonds.

The condition of this company affords a striking illustration of the evils of over-capitalization. With a gross revenue of \$8,173,113.91 per annum and a net operating revenue of \$3,916,374.55 per annum, this company apparently is unable to make much needed extensions and to maintain its service in first class condition. This is so because there is absorbed out of its earnings interest on its bonded and other indebtedness of \$1,999,893.86 per annum, and \$350,000 dividends on its first preferred stock. If this company were conservatively capitalized, there would be ample funds derived from earnings to put the entire property in first class condition, make all needed extensions, pay all fixed charges and dividends on a reasonable amount of capital stock.

Upon the failure of applicant to produce the books, as requested, it was announced that no order would be made granting this application, and in view of the fact that these books have not been produced, although ample time has been given, it is the conclusion of this Commission that this application should be denied and that it be understood that no favorable action will be taken by this Commission on any application presented by the United Railroads, or its subsidiaries, until the information demanded by the Commission has been furnished.

#### ORDER.

Application having been made to the Railroad Commission of the State of California by United Railroads of San Francisco, for an order authorizing the issue by said company of \$2,350,000 face value of 5-year promissory notes bearing interest at the rate of 6 per cent per annum,

And a hearing having been duly held and it appearing to the Commission that for the reasons set out in the foregoing opinion said application should be denied,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby deny said application.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of February, 1913.

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DECISION No. 440.

IN THE MATTER OF THE APPLICATION OF MARKET STREET RAILWAY COMPANY FOR PERMISSION TO ISSUE TWO THOUSAND ONE HUNDRED AND FIFTY FIVE PER CENT GOLD BONDS, AND DEPOSIT THE SAME AS COLLATERAL TO SECURE TWO THOUSAND THREE HUNDRED AND FIFTY SIX PER CENT GOLD NOTES OF UNITED RAILROADS OF SAN FRANCISCO.

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Application No. 284.

*Decided February 4, 1913.*

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*Wm. M. Abbott*, for Market Street Railway Company.

*Goodfellow, Eels & Orrick*, for Rollins & Sons.

*E. P. E. Troy*, for Public Ownership Association.

REPORT OF THE COMMISSION.

This is an application by Market Street Railway Company, for an order authorizing the issue by said company of \$2,150,000 face value of its 5 per cent sinking fund gold bonds, and to pledge the same as collateral security for \$2,350,000 face value of promissory notes of United Railroads of San Francisco, authorization for the issue of which promissory notes is asked for by said United Railroads of San Francisco in Application No. 283 on file and heard with this application.

The need for the issuance of the bonds herein applied for is wholly dependent upon the issuance of the promissory notes asked to be authorized in Application No. 283, and as said last mentioned application has been denied, it follows that this application should be denied.

The reasons for the denial of Application No. 283 and this application, No. 284, are fully set out in the opinion and order issued in said Application No. 283, reference to which is hereby made.

**ORDER.**

Application having been made to the Railroad Commission of the State of California by Market Street Railway Company for an order authorizing the issue by said company of \$2,150,000 face value of its 5 per cent sinking fund gold bonds,

And a hearing having been duly held and it appearing to the Commission that for the reasons set out in the foregoing opinion said application should be denied,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby deny said application.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of February, 1913.

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**DECISION No. 441.**

**STEPHEN A. D. CLARK, E. C. AUCHMOODY, JOHN B. JORDAN,  
JOSEPH L. HALE, R. W. WRIGHT, AND LAVINDA YENDES**

*vs.*

**HERMOSA BEACH WATER COMPANY AND  
QUINTIN J. ROWLEY.**

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**Case No. 287.**

*Decided February 4, 1913.*

**Defendant Rowley purchased and subdivided certain land for sale as building lots.**

**Defendant water company contracted with Rowley to deliver stated quantities of water for distribution upon said lands. The distribution mains upon the lands were laid by Rowley, who sold the lots with an agreement to supply the purchasers with water for irrigation and domestic purposes at a specified rate, it being stipulated in the agreements that Rowley would not be responsible for any failure of the water company to perform its contract. The water company discontinued delivery of water to Rowley and thereafter delivered directly to the consumers upon said lands, through the system installed, at its standard rates. Subsequently, thirty-one lots belonging to one of the complainants were disconnected by the water company from the main running in front of said lots. The water company offered at the hearing to restore these connections free of cost. Complainants, alleging that defendants had failed to supply an adequate quantity of water, petitioned for relief.**

***Held,* It is the duty of a public utility to furnish to the limit of its facilities all people properly reachable under its system and this without regard to the question of whether or not each proposed connection will or will not be profitable, and provided the system as a whole, with an additional connection or connections, produces to the owners of the utility a reasonable return upon the value of the property. Just where to draw the line between an unreasonably**

expensive installation and service and one which is reasonable is a very nice question and must be decided on the circumstances in each case. An extraordinarily expensive service demanded by a consumer, if provided at the same rates usually applied, would result in burdening the persons who take the service under normal conditions with an additional expense result from the unusual location or condition of the person demanding the service.

*Held*, Under ordinary circumstances, this Commission might refuse to compel the connection of vacant property with water mains, but, in view of the agreement of the water company to restore connections destroyed by it and as such connections may be of some advantage to complainant owning said property, the agreement on the part of the company should be carried out.

*Held*, That defendant water company should be compelled to furnish an adequate supply of water under proper pressure in the so-called gravity line to enable complainants to obtain a steady and reliable supply.

*Charles M. Ackerman*, for Complainants.

*S. M. Haskins and Gibson, Dunn and Crutcher*, for defendants,  
Hermosa Beach Water Company.

*Lewis and O'Connor*, for defendant, Quintin J. Rowley.

#### REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

By this action it is sought to obtain an order of the Commission compelling the defendants to furnish complainants with an adequate supply of water for domestic and irrigating purposes. It is alleged that defendant, Hermosa Beach Water Company, is a public utility owning and operating a water producing and distributing plant, which furnishes water to the citizens of Hermosa Beach, Manhattan Beach and territory in the vicinity of these two places. It is alleged that defendant, Rowley, is a public utility, that he does not own a plant, but through contracts made with the Hermosa Beach Water Company and complainants, he is obligated to supply complainants with an adequate water service.

Defendant, Rowley, purchased land and subdivided it into building lots, some of which are now owned by complainants who reside thereon, and the demand is made that water be furnished in adequate amount to these lots. In 1905, Rowley made a contract with the Hermosa Beach Water Company, in which it was provided that there should be delivered to him not less than 130,000 gallons of water per month and not more than 1,800,000 gallons per month, the water to be delivered at a point on the north boundary line of the second addition to Hermosa Beach. This point of delivery was below the level of the property of Dr. Rowley, and as the bottom of the reservoir of the water company was below the level of said lands, water would not flow from said reservoir to said lands by gravity and Rowley installed a small windmill, pump and tank and pumped from the mains of the Hermosa Beach Water Company into this tank, from which his property was served. Rowley laid mains and connected each lot in his tract there-

with and furnished water to the people who purchased his lots in the manner just above described. He made contracts with the purchasers of these lots, under which he agreed to furnish them water for domestic and irrigating purposes for the price of  $7\frac{1}{2}$  cents per thousand gallons. but it was expressly stipulated in these contracts that Rowley would not be responsible for any failure of the Hermosa Beach Water Company to fulfill its contract with him for the delivery of water.

Rowley disclaims any ownership or interest in the mains and connections made therewith, and declares that in effect he has dedicated such mains and connections to the owners of lots in his tract.

About July of 1911, the windmill blew down and since then water has been pumped with a small gasoline engine from the gravity line of the water company to complainants. It does not appear who owns this engine and pump as all parties to the action disclaim having purchased or installed it. It has been, and is being, operated by and at the expense of complainants. The land upon which it stands is now owned by complainant Clark. On July 13, 1911, the water company notified Rowley, in writing, that the company would thereafter discontinue furnishing water to him under the agreement of date February 21, 1905, and thereupon, the water company turned off the water. Then the company turned on the water and collected from the individual consumers the standard rate for water charged over its system.

The water company thereby assumed direct public utility relations with complainants by furnishing them with water and charging and collecting rates directly from them as individuals. We will now consider the relations, the duties and the obligations of the Hermosa Beach Water Company as a public utility which has served water under certain conditions for the use of complainants for a period of over a year last past.

The broad question presented in this matter is what is the duty and obligation of the Hermosa Beach Water Company to furnish an adequate supply of water to complainants, taking into consideration the rates charged for the service now furnished and the extent to which this company should be compelled to furnish water to consumers wherever situated.

If it appeared in this case that the water company had agreed to furnish complainants with an adequate supply of water at their property, such an agreement would be considered by this Commission as prima facie evidence of the reasonableness and propriety of such service being furnished, and would insist upon its continuance; or had the company at any time furnished an adequate supply of water directly to complainants, such act of the company would be considered in the same light. But it does not appear from the evidence in this case that the company has ever furnished water to complainants, except as it is now

being furnished, to wit: in the gravity pipe line from which complainants pump the water to their premises at their own expense. Nor does it appear that the company ever contracted to do more than this.

Hence, the matter to be decided by this Commission is: Viewing the situation as a whole and considering the rights of all the customers supplied by this water company, should the company be compelled to perform the unusual and expensive service demanded by complainants at the standard or regular rates charged by the company to all its consumers. Or whether, if it be found to be the duty of the water company to furnish the complainants with an adequate supply of water, should the additional expense of installing such service and operating same be borne by complainants, or be taxed against all of the consumers of the water company.

It is the duty of a public utility to furnish to the limit of its facilities all people properly reachable under its system, and this without regard to the question of whether or not each proposed connection will, or will not, be profitable, provided the system as a whole, with the additional connection, or connections, produces to the owners of the utility a reasonable return upon the value of the property.

Strictly speaking, each consumer of the utility should bear the additional burden his service costs above that of the least expensive service, but to apply this doctrine would result in myriads of different rates and would result, in the judgment of this Commission, in greater difficulties and injustices than to apply the rule that within reasonable bounds all users of a service of a given utility should be supplied with that service at the same rate, taking into consideration, of course, the propriety in certain cases of establishing classes by way of large and small consumers, etc. This latter doctrine, however, must be modified to the extent that an extraordinary expensive service demanded by a consumer if provided at the same rates usually applied would result in burdening the persons who take the service under normal conditions with the additional expense resulting from the unusual location or condition of the person demanding the service.

To illustrate: if a utility were operating in a valley and was providing water by gravity flow to people in the valley and the utility were compelled to install a service at the top of a mountain, the expense of which installation and the cost of producing the service was twice the cost and expense on the rest of the system, manifestly, to charge this consumer on the top of the mountain the same rate as is charged in the valley would result in the necessity of tremendously increasing the rate in the valley in order to take care of the loss suffered in the service to the mountain top.

Just where to draw the line between an unreasonably expensive

installation and service and one which is reasonable, is a very nice question, and must be decided on the circumstances in each case.

In some instances it may be that finding the utility deriving more than a reasonable profit or return on the value of its property, the additional and expensive service should be ordered in on the ground that it will not reduce the profits of the utility below a reasonable amount. On the other hand, it should be borne in mind that instead of adding the new and costly service, and thus reducing the profits of the utility, justice might require that the rates to all of the consumers of the utility should be reduced.

It appears that the location of complainants is not the only one adjacent to the water system of the water company which is upon an elevation, and if this Commission ordered this utility company to provide complainants with water, it would leave the way open for a demand by the owners of all the elevated lands within reasonable distance of this water system to demand the same privileges, and with all these possible requests granted, it would unquestionably either seriously embarrass the finances of the company or else the present consumers would have to bear a very large additional burden in order that these new locations might be furnished with water.

It is altogether probable that the value of these locations on hills where it would be expensive to provide water has been decreased by this very fact, and, therefore, it seems reasonable to conclude that the purchasers of these elevated sites obtained their property for less than they would have done had water been readily available.

The water company, however, has unquestionably assumed the obligation of furnishing water in the gravity pipe line, and this service should be furnished in sufficient amount and pressure to enable applicants to pump an adequate supply of water.

It appears from the uncontradicted testimony of complainant Clark, that subsequent to the filing of the complaint herein, thirty-one lots belonging to Clark were disconnected by the water company from the main running in front of said lots, and on behalf of the water company Mr. Crutcher offered at the hearing to restore these connections free of cost.

Under ordinary circumstances this Commission might refuse to compel the connection of vacant property with water mains, but in view of the agreement of the water company to restore connections destroyed by it, and as such connections may be of some advantage to Clark, the agreement on the part of the company should be carried out.

The evidence in this case shows that defendant, Hermosa Beach Water Company, has not been furnishing an adequate supply of water under proper pressure in the so-called gravity line to enable complain-



ants to obtain a steady and reliable supply. This the water company should be compelled to do.

Nothing in this opinion shall be construed as limiting in any way the duty of a water utility to construct mains and make service connections within the territory which it holds itself out as serving or such territory as it is under legal obligations to serve.

I recommend the following form of order:

**ORDER.**

The complainants herein having filed their complaint against defendants, Hermosa Beach Water Company and Quintin J. Rowley, and the defendants having answered said complaint and a hearing having been held, and the Commission being fully informed in the premises, and basing its findings and conclusions upon the findings and matter set out in the opinion herein,

The Railroad Commission of the State of California hereby finds as a fact that Hermosa Beach Water Company is a public utility, obligated to furnish complainants herein with an adequate supply of water at proper pressure in the gravity line from which complainants are now obtaining water; and that said Hermosa Beach Water Company did remove water connections connecting the following lots belonging to complainant Clark, to wit: Lots 12, 13, 14, 15, 16, 17, 20, 21, 22, 24 and 25 in Block Eight; Lots 21, 22, 23 and 24 in Block Five; Lots 10, 11 and 12 in Block Six, and all of Block Nine, Carnation Villa Tract, in the county of Los Angeles, and that said water company has agreed to restore said connections free of cost,

*It is hereby ordered* that the Hermosa Beach Water Company furnish in the mains from which complainants now obtain their water, an adequate supply of water at a pressure at all times of not less than 20 pounds per square inch, said company to begin giving said service within a period of sixty days from the date of this order; and

*It is further ordered* that said Hermosa Beach Water Company restore the service connections to the lots herein above in this order described, and that said connections be restored within a period of thirty days from the date of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of February, 1913.

## DECISION No. 442.

IN THE MATTER OF THE APPLICATION OF WEST COAST GAS, LIGHT AND FUEL COMPANY AND HOME GAS AND ELECTRIC COMPANY OF NEWPORT BEACH, FOR AN ORDER AUTHORIZING THE CONSOLIDATION OF THE TWO SAID COMPANIES AND AN ORDER AUTHORIZING THE CONSOLIDATED COMPANY TO ISSUE STOCKS AND BONDS, AND FURTHER FOR A CERTIFICATE AUTHORIZING EXTENSIONS AND EXERCISE OF FRANCHISE RIGHTS.

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Application No. 257.

*Decided February 6, 1913.*

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## SUPPLEMENTAL ORDER.

## REPORT OF THE COMMISSION.

The Commission having on November 5, 1912, made an order in the above entitled proceeding authorizing West Coast Gas Company to execute and deliver its deed of trust or mortgage to secure a possible maximum issue of bonds of the face value of two hundred and fifty thousand (\$250,000) dollars, and to actually issue under such trust deed or mortgage bonds of the face value of one hundred thousand (\$100,000) dollars upon the conditions, among others, that "said West Coast Gas Company shall have filed with this Commission a trust deed or mortgage in form and substance satisfactory to the Commission, and shall have received from the Commission a supplemental order approving said trust deed or mortgage," and that "said West Coast Gas Company shall first have filed with said Commission a certified copy of a grant, bargain and sale deed to it from R. E. L. Sackett," conveying a certain ranch known as the Sackett ranch, and West Coast Gas Company having on January 24, 1912, filed with the Commission a copy of its trust deed to Mercantile Trust Company, of San Francisco, dated July 1, 1912, securing an authorized issue of two hundred and fifty thousand (\$250,000) dollars face value, first mortgage, six per cent, twenty year, sinking fund, gold bonds, and having at the same time filed with the Commission a certified copy of a deed from Robert E. L. Sackett and Millie B. Sackett to West Coast Gas Company, dated November 25, 1912, and the Commission having examined both of these documents,

*It is hereby ordered* that said trust deed of West Coast Gas Company to Mercantile Trust Company, of San Francisco, dated July 1, 1912,

securing an authorized issue of two hundred and fifty thousand (\$250,000) dollars face value, first mortgage, six per cent, twenty year, sinking fund, gold bonds, and said deed of Robert E. L. Sackett and Millie B. Sackett to West Coast Gas Company, dated November 25, 1912, conveying a certain ranch known as the Sackett ranch be and the same hereby are approved.

By order of the Railroad Commission.

Dated at San Francisco, California, this 6th day of February, 1913.

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DECISION No. 443.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
COUNTIES GAS COMPANY OF CALIFORNIA FOR  
AUTHORITY TO ISSUE ADDITIONAL BONDS.

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Application No. 230.

*Decided February 6, 1913.*

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Applicant permitted to issue additional bonds upon conditions prescribed in previous order.

**SECOND SUPPLEMENTAL ORDER.**

**REPORT OF THE COMMISSION.**

The Commission having on October 14, 1912, made an order in the above entitled proceeding authorizing Southern Counties Gas Company of California to issue from time to time its 30-year six per cent first mortgage bonds in the aggregate amount of forty-seven thousand (47,000) dollars, under its deed of trust to the Los Angeles Trust and Savings Bank, dated April 1, 1911, upon the condition, among others, that prior to each issuance of such bonds applicant shall have filed with the Commission a verified statement showing that the terms of said trust deed have been complied with fully, and this Commission shall have made a supplemental order permitting the issuance of such bonds;

And this Commission having on January 15, 1913, made a supplemental order authorizing Southern Counties Gas Company of California to issue, under the original order of this Commission in this proceeding, bonds to the amount of \$19,500 face value, and applicant having on February 6, 1913, filed with the Commission evidence that, under the terms of its trust deed to the Los Angeles Trust and Savings Bank, applicant is now entitled to issue additional bonds to the amount of \$10,000 face value, and the Commission being of the opinion that applicant is entitled to issue additional bonds to the amount of \$10,000, and also that a further hearing is not necessary in this proceeding,

*It is hereby ordered* that Southern Counties Gas Company of California be and the same hereby is authorized to issue its 30-year six per cent first mortgage bonds to the amount of \$10,000 face value, upon the express conditions set forth in this Commission's order in the above entitled proceeding, made on October 14, 1912, which conditions are hereby made a part of this order.

By order of the Railroad Commission.

Dated at San Francisco, California, this sixth day of February, 1913.

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Decision No. 444, grade crossing; not printed. See end of volume.

DECISION No. 445.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY, AN ELECTRICAL CORPORATION, FOR AN ORDER AUTHORIZING SAID COMPANY TO RAISE CERTAIN OF ITS SCHEDULED RATES FOR ELECTRIC POWER SERVICE FOR PUMPING FOR IRRIGATION PURPOSES IN THE COUNTY OF RIVERSIDE, AND IN THE COUNTY OF SAN BERNARDINO, SOUTH OF THE SAN BERNARDINO MOUNTAINS (EXCEPTING TERRITORY WITHIN INCORPORATED CITIES AND TOWNS IN SAID TWO COUNTIES), IN THE STATE OF CALIFORNIA.

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Application No. 343.

*Decided February 6, 1913.*

Applicant filed certain preliminary schedule of rates for pumping plants of 15-horsepower and over in effect August 1, 1911; also, a schedule of power rates in effect April 1, 1912, relative to installations of 5-horsepower and over. In this latter schedule, the rates designated for installations of 15-horsepower and over were in excess of petitioner's rates as of August 1, 1911. Business was solicited and contracts for electric service entered into under each of these schedules. The power rates, as set forth in the petition herein, increase certain rates.

*Held*, That no injustice to the public will result from permitting petitioner to establish the new schedules as set forth in the application, provided that all present contracts are carried out by petitioner pending any further action or order of the Commission in regard to such; and provided, further, that the rate for installations of less than 5-horsepower are provided for at a rate which will enable the small user of electric current to utilize same for irrigation service.

Application granted on condition that schedules be modified so as to give a rate of three cents per kilowatt hour to installations paying a monthly minimum of \$2.50 for six months of each year.

*I. B. Potter*, for Applicant.

REPORT OF THE COMMISSION.

*ESHLEMAN*, Commissioner.

The petition in this matter is filed under section 63 of the Public Utilities Act and requests authority to establish certain new rate

schedules for electric power service in San Bernardino and Riverside counties.

On April 27, 1912, in compliance with the Commission's General Order No. 15, petitioner filed rate schedules applicable to Inyo, Kern, San Bernardino and Riverside counties. It appears from the rate schedules filed that a certain "preliminary schedule of rates for pumping plants" of 15-horsepower and over was "in effect August 1, 1911, in San Bernardino and Riverside counties," and it is admitted by petitioner that business was solicited and contracts taken for service under these rates.

In connection with petitioner's said filing of April 27, 1912, there also appeared a "schedule of power rates in effect April 1, 1912, in San Bernardino County, California, south of the San Bernardino Mountains (except the city of San Bernardino), and in Riverside County, California," designated as "Special—for Pumping Plants" and providing for installations of 5-horsepower and over. In this schedule, the rates designated for installations of 15-horsepower and over were in excess of petitioner's rates as of August 1, 1911. Business was also solicited and contracts for electric service entered into after April 1, 1912, under this schedule.

On September 18, 1912, petitioner filed an application to "reduce and modify its schedule of rates for electric power service in the counties of San Bernardino and Riverside (except within incorporated cities and towns in said counties)," and said petition, among other things, alleged as follows:

"That the said proposed new schedule, when in operation, will result in a substantially reduced price of current to the public, and will be in every respect more favorable to the public than the rates set forth in the schedules now in effect, and that the approval of said annexed schedule by your Commission will enable your petitioner to increase the number of electric consumers along the line of its distribution system at a time when the agents and canvassers of your petitioner are in the field, and will thereby save a considerable item of expense which your petitioner may be required to incur unless this new schedule can be immediately approved."

From a careful investigation of petitioner's application, it became evident that, aside from a certain rate for electric cooking and heating service, no reductions were asked for, but, on the other hand, the power rates as set forth in the application actually tended to increase certain rates of petitioner in territory affected. The effect of the new schedule "for pumping plants for irrigation" was pointed out to petitioner, who was advised that it would be necessary to justify the increases before the permission of this Commission could be obtained to put such schedules into effect. Thereupon, petitioner prepared and filed the

present application in this case "to raise certain of its scheduled rates," and said petition was heard before me at San Bernardino on January 27, 1913.

It developed at the hearing that the Southern Sierras Power Company was organized in the year 1911, and, at the time of filing its original schedule of rates on April 27, 1912, it had not completed its steam plant at San Bernardino, its hydroelectric plant on Bishop Creek in Inyo County, or its high tension transmission line connecting these plants, and the "original or preliminary schedules" of rates which were prepared in advance of the completion of its system were arrived at merely by comparison and without any relation to or investigation of the actual cost of service to petitioner. Several contracts were entered into under petitioner's "tentative or preliminary schedule of rates" and service is at this time being supplied at the rates therein set forth. It further appears that no current was delivered from petitioner's steam generating plant in San Bernardino until January 3, 1912, and that no current whatever had been delivered from its hydroelectric plant up to the time of filing the application in this case.

From the testimony in this case and after a careful investigation of all the circumstances involved, it appears that no injustice to the public will result from permitting petitioner to establish the new schedules as set forth in the application, provided that all present contracts are carried out by petitioner pending any further action or order of the Commission in regard to such; and provided, further, that the rate for installations of less than 5-horsepower are provided for at a rate which will enable the small user of electric current to utilize same for irrigation service.

I, therefore, recommend that the application be granted on condition that Schedule No. 4-1E and Schedule No. 5-1E be so modified as to give a rate of 3 cents per kilowatt hour to installations paying a monthly minimum of \$2.50 for six months of each year.

I submit the following form of order:

#### ORDER.

The Southern Sierras Power Company having applied to this Commission for an order authorizing said company to raise certain of its scheduled rates for electric power service for pumping in the county of Riverside and in the county of San Bernardino, south of the San Bernardino Mountains (excepting territory within incorporated cities and towns in said two counties), and a hearing having been held and being fully advised in the premises,

*It is hereby ordered* that applicant be permitted to establish and put into effect on and after February 15, 1912, certain schedules of rates for power service, designated in Exhibits "A" and "B" of the applica-

tion as Schedule No. 4-1E and Schedule No. 5-1E, on condition that said schedules be so modified as to allow a rate of 3 cents per kilowatt hour to be given to installations paying a monthly minimum charge of \$2.50 for six months of each year, and providing that no contract heretofore entered into by petitioner for electric power at rates less than those herein authorized be canceled without the express approval of this Commission.

This order is not intended to approve or recognize the justice or reasonableness of the rates hereby permitted, and is simply given to facilitate the transaction of business by the company pending any further action or order of the Commission in this matter.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this sixth day of February, 1913.

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DECISION No. 446.

IN THE MATTER OF THE APPLICATION OF THE HALF MOON  
BAY LIGHT AND POWER COMPANY FOR PERMISSION TO  
ACCEPT PROMISSORY NOTES FOR SALE OF PART OF ITS  
CAPITAL STOCK.

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Application No. 376.

*Decided February 7, 1913.*

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Applicant was given permission (Application No. 166) to issue and sell an increased amount of its capital stock of the par value of \$25 per share. In payment for some of the shares, notes were taken and discounted. By reason of such discount, plus the commissions paid for selling the stock, applicant failed to realize \$20 per share, the net selling price specified in the previous order. Applicant now asks for permission to take notes, where it is found absolutely necessary, in payment on the sale of its stock, said notes to bear interest at 6 per cent, and also asks permission to discount said notes in such an amount as is necessary, but at all times after deducting the commission on sales of 18½ per cent and the discount allowed to the bank, each sale to net applicant not less than \$20 per share.

The commission has not found it necessary in the past to lay down any general rule that stock may be sold and notes taken in payment therefor, preferring to pass upon each case of this kind as it is presented. There seems to be no legal reason why permission should not be given to sell stock in this manner where all the circumstances surrounding the application are found to be favorable to the development and successful prosecution of the enterprise. Application granted.

*J. O. McElroy*, for Applicant.

## REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

On August 7, 1912, this applicant appeared before the Railroad Commission asking for a certificate of public convenience and necessity to install and operate a plant for the generation of electric energy for heat, light and power purposes in the county of San Mateo. Its capital stock at that time was \$25,000. Permission was granted as prayed for and thereafter, to wit, October 3, 1912, applicant again appeared before the Commission applying for permission to increase its capital stock to \$100,000. After due investigation, this application was also granted and applicant was permitted to increase its capitalization to \$100,000, holders of stock under the former capitalization to receive the new stock for their holdings under the former capitalization at \$20 per share on the par value of \$25, or 80 per cent of par, and the remainder of the stock to be sold so as to net applicant not less than 80 per cent of par; the purposes to which the proceeds were to be devoted being set forth in the order in that Application No. 166 issued under date of October 3, 1912.

Following this increase in its capitalization, applicant entered into an agreement with one J. A. Bloch by the terms of which agreement said Bloch was to sell the remainder of applicant's capital stock, amounting to 1,875 shares, at the par value of \$25 per share, for which service and sales said Bloch was to receive a commission of 18½ per cent on the par value of \$25.

Without, as applicant claims, any intention of proceeding contrary to law, said Bloch was permitted by applicant to take notes in payment on the sale of some of applicant's stock and did so take notes in the sum of about \$11,000. Applicant discounted these notes and it developed at the present hearing that the payment of 18½ per cent commission to Bloch and the discount allowed on the notes had resulted in a net loss, on the sale of stock up to the present time, of \$29; that is, applicant had failed to realize net on its sale of stock the \$20 per share named in the Commission's order by the sum of \$29. The testimony shows that the money received from the sale of stock has been devoted to the purposes named in the order in Application No. 166, to wit, discharge of obligations and the construction of extensions.

Applicant now desires permission to take notes, where it is found absolutely necessary, in payment on the sale of its stock, said notes to bear interest at 6 per cent, and also asks permission to discount said notes in such an amount as is necessary but at all times after deducting the commission of 18½ per cent to J. A. Bloch and the discount allowed to the bank, each sale to net applicant not less than \$20 per share.

This Commission has not found it necessary in the past to lay down any general rule that stock may be sold and notes taken in payment



therefor, preferring to pass upon each case of this kind as it is presented. There seems to be no legal reason why permission should not be given to sell stock in this manner where all the circumstances surrounding the application are found to be favorable to the development and successful prosecution of the enterprise; and as I find that this project is a worthy one, that the successful operation of the utility will be of great benefit and advantage to the people in the section where it is located, and as the people seem to take an interest in making a success of the enterprise and will probably buy the stock and give notes in payment thereof, which notes banks will be willing to discount, I believe that applicant should be granted permission, under such reasonable rules as the Commission may prescribe, to sell such portion of its remaining capital stock as is necessary and take notes in payment therefor. As an evidence of the desire of the people to help to develop this utility and also as to the character of the notes taken, it is worthy of mention that, according to the testimony in this case, one note of \$2,500 was discounted by the bank for \$5.00.

I recommend the following order:

**ORDER.**

Whereas Half Moon Bay Light and Power Company, a corporation devoted to the development and distribution of electric energy, operating in San Mateo County, under permission as to public convenience and necessity granted by this Commission, having increased its capital stock from \$25,000 to \$100,000, also by permission of this Commission now desires permission to sell some portion of its capital stock and take notes in payment therefor; and

Whereas there is every prospect that the Half Moon Bay Light and Power Company will be developed and conducted successfully to the advantage of the residents of the section in which it is located; and

Whereas it appears from the testimony that the stock can be sold at the price per share ordered by this Commission in its order dated October 3, 1912, and notes taken in payment therefor, which notes banks will be willing to discount at a reasonable figure; now, therefore,

*Be it ordered* that the Half Moon Bay Light and Power Company be and it is hereby authorized to sell the remainder of its capital stock, 1,337 shares, and take notes in payment therefor, such notes to be due and payable within six months from date thereof and to bear interest at 6 per cent, the proceeds thereof to be used in discharging certain obligations of applicant as set forth in the opinion and order in Application No. 166 and such other obligations as may have been contracted since, or will be contracted in the future, in the construction and extension of applicant's plant.

*And be it further ordered* that said Half Moon Bay Light and Power Company be and it is hereby granted permission to discount said notes,

provided that the commission paid to said J. A. Bloch on the sale of said stock and the discount allowed to banks for discounting said notes shall not exceed \$5 per share. In other words, applicant must receive net \$20 per share, as per this Commission's order of October 3d, above referred to; and provided, further, that no stock so sold shall be delivered until notes taken in payment therefor have been paid.

This order is granted upon the express condition that J. J. Gomes, president and manager of the Half Moon Bay Light and Power Company, shall return, or cause to be returned, to the treasury of said Half Moon Bay Light and Power Company, the sum of \$29, above referred to in this opinion, and certify to the Railroad Commission that said sum has been returned to the treasury of applicant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California. this 7th day of February, 1913.

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DECISION No. 447.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORIZATION TO PURCHASE ALL THE ISSUED CAPITAL STOCK AND BONDS OF SAN GABRIEL VALLEY HOME TELEPHONE COMPANY, AND UPON THE ACQUISITION OF SAID STOCK AND BONDS TO ACQUIRE ALL THE PROPERTY OF SAN GABRIEL VALLEY HOME TELEPHONE COMPANY, AND OF SAN GABRIEL HOME TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY TO THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY WHEN THAT COMPANY SHALL HAVE ACQUIRED ALL THE STOCK AND BONDS OF SAN GABRIEL VALLEY HOME TELEPHONE COMPANY. INTERVENTION OF THE CITY OF ALHAMBRA.

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Application No. 281.

*Decided February 7, 1913.*

The applicants herein being engaged in operating telephone systems in the city of Alhambra and in the towns of Arcadia and El Monte, county of Los Angeles, petitioned for permission to consolidate their two telephone systems into one system. Subsequent to the filing of the application, the city of Alhambra asked and was granted leave to intervene. Said city made no objection to the granting of the application, but requested that certain conditions be incorporated in the

Commission's order and that the effectiveness of such order be made contingent on the assent of the city thereto. A similar request by the city of Pasadena was granted in Applications Nos. 54 and 58 and for this reason held that the request of the city of Alhambra be granted.

*Held.* It is to the best interest of all concerned that the proposed consolidation be sanctioned and that public convenience and necessity will be served thereby, conditions looking to the safeguarding of the interests of the public being inserted in the order.

*Held.* That the sanction of the Commission to the transfer of the property in question in nowise binds the Commission, nor any rate fixing or regulating body, as to the values of said plant.

*H. D. Pillsbury*, for The Pacific Telephone and Telegraph Company.

*Arthur Wright*, for United States Long Distance Telephone and Telegraph Company.

*Edgar O. Fawcett*, for San Gabriel Valley Home Telephone Company.

*Sloan Pitzer*, for City of Alhambra.

*S. M. Haskins*, for Los Angeles Home Telephone Company.

#### REPORT OF THE COMMISSION.

*EDGERTON, Commissioner.*

This is an application by The Pacific Telephone and Telegraph Company, joined in by San Gabriel Valley Home Telephone Company, for an order authorizing the purchase by said The Pacific Telephone and Telegraph Company of all of the capital stock and bonds of San Gabriel Valley Home Telephone Company, and upon the acquisition of said stock and bonds authorizing the said first named company to acquire all of the property of said last mentioned company, and authorizing said San Gabriel Valley Home Telephone Company to sell all of its property to said Pacific Telephone and Telegraph Company when said last mentioned company shall have acquired all the stock and bonds of said San Gabriel Valley Home Telephone Company.

Both of the applicants herein are operating telephone systems in the city of Alhambra and in the towns of Arcadia and El Monte, in the county of Los Angeles, and it is the purpose of this application to obtain permission to consolidate these two telephone systems into one system.

The Pacific Telephone and Telegraph Company installed its service in the city of Alhambra about the year 1903 without having obtained a franchise from said city. Thereafter, and for a long period of time, there was a controversy between said city and said telephone company as to the necessity of said company obtaining a franchise from said city. Finally, after the decision of the United States Supreme Court in the case of the *City of Pomona vs. The Pacific Telephone and Telegraph Company*, said company applied to the trustees of the city of Alhambra for a franchise. Thereupon, the city of Alhambra demanded that a consolidation be effected within sixty days, of the San Gabriel Valley Home Telephone Company's plant and that of the

Pacific Company so that the double telephone system would be done away with and the citizens would be enabled to use a single system. No consolidation was effected and the trustees of the city of Alhambra denied the application of the Pacific Company for a franchise and ordered them to remove their poles and wires from the streets. Thereafter an agreement of consolidation was effected between applicants herein.

After the application herein was filed, the city of Alhambra asked and was granted leave to intervene. Said city was represented at the hearing and made no objection to the granting of the application, but requested that certain conditions be put in the order of the Commission and that the effectiveness of the Commission's order be made contingent on the assent of the city thereto. A similar request by the city of Pasadena was granted in Applications Nos. 54 and 58, and for the reasons therein set out, I recommend that this request be granted.

The United States Long Distance Telephone and Telegraph Company has been serving the patrons of the San Gabriel Valley Home Telephone Company with a long distance service and it is proposed to permit or provide for long distance service from the consolidated exchange with both the United States Long Distance Telephone and Telegraph Company and the toll system of The Pacific Telephone and Telegraph Company. The United States Long Distance Telephone and Telegraph Company requests that certain conditions be incorporated in the order of the Commission, safeguarding its interests.

After careful consideration, I am convinced that it is to the best interest of all concerned that this proposed consolidation be sanctioned by the Commission and that public convenience and necessity will be served thereby. Conditions looking to the safeguarding of the interests of the public have been inserted in the following order.

No value is herein found on either of the plants mentioned in this application, nor on the consolidated plant as a result of merging both these plants, and it should be clearly understood that the sanction of this Commission to the transfer of the property herein mentioned in no wise binds this Commission, nor any rate-fixing or regulating body, as to the values of said plant.

The following form of order is herewith submitted:

**ORDER.**

Application having been made by The Pacific Telephone and Telegraph Company for authorization to purchase all the issued capital stock and bonds of San Gabriel Valley Home Telephone Company, and upon the acquisition of said stock and bonds to acquire all the property of San Gabriel Valley Home Telephone Company; and of San Gabriel Valley Home Telephone Company for authorization to sell its property to The Pacific Telephone and Telegraph Company when that company

shall have acquired all the stock and bonds of San Gabriel Valley Home Telephone Company; and the city of Alhambra having intervened, and a hearing having been held upon said application and intervention, and it appearing to the Commission that the application should be granted under reasonable restrictions and limitations,

*It is hereby ordered* that the application of The Pacific Telephone and Telegraph Company for authorization to purchase all the issued capital stock and bonds of San Grabiell Valley Home Telephone Company and upon acquisition of said stock and bonds to acquire all the property of San Gabriel Valley Home Telephone Company, and of San Gabriel Valley Home Telephone Company for authorization to sell its property to The Pacific Telephone and Telegraph Company when that company shall have acquired all the stock and bonds of San Gabriel Valley Home Telephone Company, be and the same is hereby granted upon the following terms and conditions, and contingent upon the passage of an ordinance by the city of Alhambra approving said purchase and sale and said terms and conditions:

#### I.

(a) Toll service shall be maintained and be at all times available to all present and future telephone subscribers who may be subscribers of the consolidated telephone service in Alhambra, so that any subscriber in Alhambra may have incoming service from and outgoing service to the existing toll lines now entering Alhambra, or any future lines which may be built thereto, and it shall be optional with these subscribers over which toll system they shall be given connection in so far as such option is made possible by the terminal facilities to which the said toll lines may have access elsewhere.

Ample and suitable space or room for facilities shall be furnished the United States Long Distance Telephone and Telegraph Company, its successors and assigns, in any building in which the exchange telephone service shall be established, in which said long distance company shall have the right to set up and maintain and operate sufficient and satisfactory long distance equipment and apparatus for caring for and conducting its long distance business, both incoming and outgoing.

The United States Long Distance Telephone and Telegraph Company shall have the right to install apparatus, appliances, equipment and facilities for the carrying on, operating, and caring for its long distance business, and shall employ on its own account operators and employees necessary to conduct such business.

The physical connection between the long distance apparatus and equipment of said United States Long Distance Telephone and Telegraph Company and the apparatus of the local plant shall be made in

a manner suitable to the carrying on of said long distance business, to the advantageous operation of the long distance apparatus and lines, and proper service for the patrons of the said local company and without unnecessary cost. The patrons of the said local company shall have the right and option to call for long distance service over the lines of the United States Long Distance Telephone and Telegraph Company, and calls made by patrons of the local company for such service shall be so handled by the operators of the local company that the service given to the patrons of the local company by the said long distance company shall not be in any way at a disadvantage. All messages, both incoming and outgoing, over the lines of the long distance company shall be handled promptly by the operators of the local company and with the same promptness that incoming and outgoing messages are handled over the long distance lines of any other company or over the long distance lines of the local plant or exchange.

The long distance company shall have the right, subject to the approval of the Railroad Commission of the State of California, to designate the name by which its service shall be called and published.

Long distance service to or from the said United States Telephone and Telegraph Company shall be handled by the local company without unnecessary hindrance, delay or expense, and without any action or suggestion on the part of any operator or employee of the local company that might tend to influence the patron in his selection of the long distance lines to be used.

As new or additional equipment or alterations in equipment are made by the local company, the said long distance company shall be given the information at as early a date as possible of any contemplated changes, and permitted to do anything necessary to bring its equipment into proper relations with the proposed change, and no delay or hindrance shall be made by the local company in this connection nor in the event the said long distance company shall desire to make changes in or additions to its own apparatus.

The United States Long Distance Telephone and Telegraph Company shall maintain its present particular party long distance service, and may make such particular party service and two number service optional after approval by the Railroad Commission of the State of California.

The toll service, both incoming and outgoing, destined to or originating at the stations of the Alhambra local company, situated in the towns of El Monte and Arcadia, shall be handled in the same manner as at the present time; that is to say, patrons calling for the service of the said United States Long Distance Telephone and Telegraph Company shall be promptly connected with the lines of the United States Long Distance Telephone and Telegraph Company by the

operators of the local company without unnecessary hindrance, delay or expense and without any action or suggestion on the part of any operator or employee of the local company that might tend to influence the patron in his selection of the long distance lines to be used, and messages destined over the lines of the said long distance company for persons or patrons at El Monte and Arcadia shall be handled without unnecessary hindrance or delay by said local company. The operators of the local company at El Monte and Arcadia shall obey all rules and regulations of the said long distance company in so far as the handling of such long distance business coming from or destined to the lines of said company is concerned.

Whenever, as a result of sufficient development or in the judgment of the said United States Long Distance Telephone and Telegraph Company, its business at either El Monte or Arcadia warrants, it may, subject to the provisions of law, install, maintain and operate a long distance switchboard at such towns under the same conditions as exist in the city of Alhambra; the same provisions of this order applying at Alhambra for the conducting of the business there and the rights of said long distance company which also exist and apply at El Monte and Arcadia with the exception just noted, subject to the order or approval of legally constituted authority.

(b) The Pacific Telephone and Telegraph Company shall maintain its present long distance service of whatever kind until the further order of this Commission, and shall enjoy the same protection against unnecessary hindrance, delay or expense with reference to any act or suggestion or interference on the part of any operator or employee or agent of the United States Long Distance Telephone and Telegraph Company, as is provided for that company in the above paragraph providing for the association of the two companies.

(c) A directory or directories showing the subscribers of the Alhambra exchange and their respective telephone numbers and otherwise compiled according to the usual practice of the two companies, shall be furnished each of the subscribers to the consolidated service in Alhambra, Arcadia and El Monte not less than twice each year. Such directory or directories shall also contain the names and numbers of all the subscribers of The Pacific Telephone and Telegraph Company of the city of Los Angeles and contiguous territory; and a local directory or directories shall be furnished each of such subscribers, which shall contain the names and numbers of all the subscribers to the consolidated service in the city of Alhambra, El Monte and Arcadia, not less than twice each year in addition to and supplementary to the general directory first provided for. A directory or directories shall also be furnished each of the subscribers to the consolidated service in Alhambra, El Monte and Arcadia by the United States

Long Distance Telephone and Telegraph Company not less than twice annually, containing all the subscribers of the Home Telephone and Telegraph Company of Los Angeles and also the subscribers, with their respective numbers, of other independent companies in territory contiguous to Los Angeles in accordance with the usual practice of the United States Long Distance Telephone and Telegraph Company.

Whenever any telephone number or numbers are changed the local company shall immediately notify the said United States Long Distance Telephone and Telegraph Company of such change in number or numbers, and such notification, inclusive of all changes made in the intervals, shall be made daily and all of the companies involved in the lists of telephone subscribers necessary to the completion of the telephone directories herein provided for, shall co-operate to the end that such directories shall be complete for the telephone field involved and shall be promptly and regularly revised to the end that such directories may be at all times as complete and up to date as is reasonably possible in accordance with existing telephonic needs; this clause to apply to such telephone companies whether or not they appear of record in this case.

## II.

### LOCAL RATES AND SERVICE.

The rentals charged the subscribers to the consolidated service in the city of Alhambra, and the service given and facilities afforded by the exchange or exchanges of said consolidated service, shall conform to the following requirements until altered by constituted authority:

(a) The minimum rate for the several classes of service now prevailing in the system of the San Gabriel Valley Home Telephone Company and The Pacific Telephone and Telegraph Company in Alhambra, El Monte and Arcadia, respectively, or the contiguous territory served therefrom, and the maximum radius to, through and over which such rates apply under the same several rates for the various classes of service now existing under the systems, respectively, shall in the several instances prevail as the maximum rate and the minimum radius applicable for the several classes of service involved.

(b) Service shall be rendered by the operating company on application and the signing of the company's contract, which contract shall be subject to the approval of the city of Alhambra, under the rates applicable to the various classes of service, with reasonable promptness, and without the requirement of a deposit of any sum as a prerequisite to the installation of service. No requirement involving any sum in the nature of a penalty shall apply as a condition of the contract under which service will be installed.

(c) The optional two number and particular party service of The



Pacific Telephone and Telegraph Company's lines between the city of Alhambra and the city of Los Angeles and other places on its lines shall be maintained as it now exists unless change is authorized by constituted authority.

(d) With reference to the efficiency of exchange service, the following conditions shall be met as the minimum requirements of efficient service under normal operating conditions:

(1) The average time for answering line signals shall not exceed four seconds.

(2) The percentage of line signals answered in ten seconds or under shall not be less than 95 per cent.

(3) The average time for the disconnection of calls shall not exceed four seconds.

(4) The percentage of disconnections within eight seconds shall not be less than 95 per cent.

(5) The calls not affected by operators' errors shall not be less than 98 per cent.

(6) The above service requirements shall apply under normal conditions, and at no time shall the ratio of operators to traffic handled be less than is necessary to the maintenance of these standards under normal conditions.

### III.

#### GENERAL AND MISCELLANEOUS REQUIREMENTS.

(a) Within a reasonable time after the purchase by The Pacific Telephone and Telegraph Company of the stock and bonds of San Gabriel Valley Home Telephone Company, as provided for in this order, The Pacific Telephone and Telegraph Company shall acquire all of the property and rights, inclusive of the franchise of San Gabriel Valley Home Telephone Company as further provided for in this order.

(b) The interchange of service between the two systems now existing and pending their final complete physical consolidation shall be effected within thirty days of the date of this order, and the engineering work necessary to effect a complete physical consolidation of the two systems shall thereafter proceed with reasonable diligence and shall be fully completed by May 1, 1913. Strict adherence to the service requirements hereinbefore outlined will not be insisted upon during the time previous to complete physical consolidation, but allowance will be made for inherent difficulties in rendering first class service during the time of effecting physical consolidation of the systems involved.

(c) The construction to be retained in service in the course of the physical consolidation as well as future installation shall, in so far

as located within incorporated cities, be subject to the approval of the constituted authorities of such cities and shall conform to the ordinances of said cities now or which may hereafter be in effect. As nearly as is reasonably possible, installation or equipment or facilities without said cities having to do with the exchange limits involved shall follow the construction standards observed within the cities in so far as they may be applicable under standard construction. Particularly shall interior block construction for the business sections and rear property line construction for the residence section prevail in the preservation of existing facilities as well as future installations, subject to the approval of constituted authorities, and conditioned upon the necessary rights of way being obtainable from property owners without charge or for reasonable compensation.

(d) For the purpose of determining gross receipts and percentages involved in payments to the city of Alhambra the companies shall make a just segregation of toll revenues based upon a pro rata determined by a consideration of toll investment and expenses and exchange investment and expenses. In case the company and the city do not agree as to such segregation, the party dissatisfied shall have the right to apply to the Railroad Commission of the State of California, whose determination with reference thereto shall be final.

(e) The provisions of this order shall become effective only upon the concurrence, as expressed by ordinance, of the board of trustees of the city of Alhambra, and the terms and conditions of this order shall become effective concurrently with such approval by said board of trustees.

(f) After the terms and conditions of this order shall have become effective and the property and rights of the San Gabriel Valley Home Telephone Company of Alhambra shall have been assigned and transferred to The Pacific Telephone and Telegraph Company, under the terms and conditions herein provided for which are declared to be just and reasonable, it is contemplated hereby that the true ownership and control of said consolidated telephone service and the control and management thereof shall at all times appear and be made public in accordance with the true facts involved.

(g) Nothing in this order made by the Railroad Commission of the State of California, or in any of the proceedings preliminary thereto, shall be deemed in any way to be an acceptance either by the Railroad Commission or the city of Alhambra of the valuations placed upon the stock and bonds of San Gabriel Valley Home Telephone Company or of the property rights, franchises or privileges involved in the transfer herein provided for, the value of such stock and bonds and of such property rights, franchises or privileges as are involved, being expressly left open.

(h) Nothing in any order made by the Railroad Commission or in the proceedings preliminary thereto shall be deemed in any way to constitute a contract between the said telephone companies, or any of them, and the city of Alhambra, or the State of California. It is intended hereby to establish certain service, construction and rate regulations to which said companies, and each of them, must conform until otherwise provided for by law.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of February, 1913.

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Decisions Nos. 448 and 449, grade crossings; not printed. See end of volume.

DECISION No. 450.

IN THE MATTER OF THE APPLICATION OF E. W. PAYNE  
FOR AN ORDER AUTHORIZING THE CONVEYANCE OF  
THE MELVIN PLACE WATER PLANT, LOS ANGELES  
COUNTY, CALIFORNIA, TO WM. E. BALL AND OF WM. E.  
BALL TO PURCHASE SAID PLANT.

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Application No. 217.

*Decided February 7, 1913.*

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SUPPLEMENTAL ORDER.

REPORT OF THE COMMISSION.

The Commission having on October 14, 1912, made an order in this proceeding authorizing E. W. Payne to sell and Wm. E. Ball to purchase the Melvin Place water plant, in Los Angeles County, and a joint supplemental application having been filed with the Commission on February 6, 1913, by Home Builders, a corporation, E. W. Payne and W. E. Ball, requesting this Commission to make a supplemental order in this proceeding authorizing said Home Builders, a corporation, and E. W. Payne to sell and W. E. Ball to purchase the Melvin Place water plant, in Los Angeles County, and the Commission being duly advised in the premises, and being of the opinion that a further hearing in this application is not necessary,

*It is hereby ordered* that Home Builders, a corporation, and E. W.

Payne be and the same hereby are authorized to sell, and that Wm. E. Ball be, and he hereby is, authorized to purchase the Melvin Place water plant, in Los Angeles County, California, upon the same conditions as are set forth in this Commission's order in this proceeding made on October 14, 1912, which conditions are hereby made a part of this order.

By order of the Railroad Commission.

Dated at San Francisco, California, this 7th day of February, 1913.

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DECISION No. 451.

IN THE MATTER OF THE PETITION OF SACRAMENTO AND WOODLAND RAILROAD COMPANY FOR AN ORDER REQUIRING SOUTHERN PACIFIC COMPANY TO RECONSTRUCT THE CONNECTING TRACK BETWEEN THE RAILROADS OF SAID COMPANIES AT MIKON, YOLO COUNTY, CALIFORNIA.

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Case No. 345.

*Decided February 10, 1913.*

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The connecting track in question was originally installed by defendant as a temporary track, to be retained during the period of delivery of rails, ties and other track material to complainant during the construction of its line from Mikon to Woodland. As all such track material had actually been delivered at the time the connecting track was removed by defendant, the Commission found that the complainant could not reasonably claim a breach of contract on the part of defendant and on that ground insist upon the track being restored. The only ground on which the Commission could require defendant to replace and maintain said track would be that of public convenience and necessity. The testimony given in the case, however, does not show that the commercial tonnage and business interchanged prior to the removal of said track was such as would demand its retention. After the matter was submitted, the parties entered into a stipulation to the effect that defendant would restore the track connection and deliver therefrom, for the period of ninety days thereafter, or for such further time as may be mutually agreed upon, all construction material consigned to complainant or its parent company at Mikon; that such interchange track should not be used for the commercial interchange of cars, loaded or empty. As no principle of public policy is violated by such agreement, *held*, that the case be dismissed.

*T. T. C. Gregory*, for Sacramento and Woodland Railroad Company.  
*Henley C. Booth*, for Southern Pacific Company.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

On December 14, 1912, Sacramento and Woodland Railroad Company filed with the Commission a petition praying that the Commission issue an order requiring Southern Pacific Company to reconstruct and replace the connecting track, heretofore constructed between the tracks of said companies at Mikon, Yolo County, California, in order that there might be an interchange of cars at this station, and also that it might receive the construction material necessary to complete its railroad.

Complainant states that the aforesaid connecting track was constructed by defendant in December, 1911, for the principal purpose of delivering thereon cars of rails, ties and other materials for use in the construction of complainant's railroad between Mikon and Woodland; complainant further states that on November 22, 1912, it was notified by defendant that said track would be disconnected on November 29, 1912, but that, as a matter of fact, said track was disconnected on November 26, 1912. Complainant also states that it has been greatly inconvenienced and put to extra expense by reason of the removal of said track and prays that the Commission order its replacement that complainant may receive over it such further construction material as is necessary to complete its railroad, and also for the general routing, interchange and transfer of cars and tonnage between the railroads of said companies.

Defendant states that said connecting track was installed as a temporary track, to be removed upon completion of the railroad of complainant between Mikon and Woodland; further, that said track was to be used principally for the transfer of rails, ties and other track materials, as shown by a letter of Mr. T. A. Graham, assistant freight traffic manager, Southern Pacific Company, to Mr. A. D. Schindler, general manager, Northern Electric Railway Company, of date December 14, 1912, providing for the construction of said track, and that it was not constructed for the purpose of delivering thereon ballast or construction materials other than those specified in the above mentioned letter, nor was it installed for the interchange of commercial business; also defendant claims that there was no agreement implied or otherwise to retain said track in service for the transfer of ballast or other material after the delivery of the construction materials specified in said letter had been completed.

Defendant further avers that since the installation of said connecting track, its double main-line track has been completed through Mikon and that the introduction of a facing point switch in the westbound track, which would be necessary if the connecting track was replaced,

would introduce an element of great hazard and danger in the operation of its high speed trains.

Defendant further contends that there are now two convenient and accessible points of transfer nearby in the city of Sacramento between its tracks and the tracks owned and operated by Northern Electric Railway Company, the lessor of complainant's railroad, over which cars of material destined for the further construction of complainant's line of railway may be transferred, and that the amount of business interchanged between complainant and defendant is not of sufficient importance to warrant the installation of another connecting track at Mikon.

It appears from the evidence in this case that the action of defendant in removing the connecting track at Mikon upon such short notice has resulted in considerable inconvenience and expense to complainant, and was more or less arbitrary and unwarranted. Complainant had a considerable amount of ballast and some other construction material en route to Mikon at the time the connecting track was removed, and was reasonably entitled to have sufficient notice of the removal of said track to admit at least of the delivery of all material then in transit. The notice given cannot be held to have been reasonably sufficient.

However, since the connecting track was, in fact, originally installed by defendant as a temporary track, to be retained during the period of delivery of rails, ties and other track material to complainant during the construction of its line from Mikon to Woodland, and as all such track material had actually been delivered at the time said track was removed, the complainant can not reasonably claim a breach of contract on the part of defendant, and, on this ground, insist that the track should be restored.

Complainant maintains that public convenience and necessity demand that said connecting track be replaced to admit of the interchange of cars and tonnage between the tracks of parties at Mikon, and further, that the business now transacted is sufficient to warrant this restoration. In my opinion, however, the testimony offered does not show that the business interchanged between the parties in the vicinity of Sacramento is of sufficient volume at this time to warrant the expense of reconstruction, maintenance and operation of this connecting track, especially when it is considered that there are already two points of connection between the tracks of parties in the city of Sacramento and within a few miles of Mikon through which the business may be interchanged. Furthermore, if the connecting track is installed it will become necessary that its operation be taken into the interlocking device, which will shortly be constructed at the Mikon crossing. This will involve considerable expense, as well as introduce an element of danger in the operation of the trains of defendant, which the situation does not appear to warrant.

It is my opinion, therefore, that the Commission can not legally require that said connecting track be reinstated by defendant on the basis of a breach of the contract between the parties, and that the only grounds on which the Commission could require defendant to replace and maintain said track would be that of public convenience and necessity. The testimony given in the case, however, does not show that the commercial tonnage and business interchanged prior to the removal of said track was such as would demand its retention.

After this matter was submitted, the parties hereto entered into a stipulation to the effect that defendant would restore the track connection and deliver therefrom for the period of ninety days thereafter, or for such further time as may be mutually agreed upon between the parties, all construction material of every class and kind consigned to complainant or its parent company at Mikon for use in construction work, including ballasting on complainant's line of road; that such interchange track should not be used for a commercial interchange of cars, loaded or empty; and that the order of submission heretofore made be set aside and the case dismissed.

As the parties have agreed and no principle of public policy is violated by such agreement, I recommend that the case be dismissed, but deem it proper to say that in the absence of such agreement I would have recommended a decision in favor of the defendant.

I submit the following form of order:

**ORDER.**

In accordance with the written stipulation of the parties on file herein,

*It is hereby ordered* that the above entitled case be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this tenth day of February, 1913.

Decision No. 452, grade crossing; not printed. See end of volume.

DECISION No. 453.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF TWO HUNDRED AND FOUR THOUSAND DOLLARS, FACE VALUE, FIRST MORTGAGE BONDS.

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Application No. 378.

*Decided February 11, 1913.*

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Applicant having incurred obligations for new construction is permitted, under the terms of its mortgage, to issue bonds in an amount, to wit: \$204,000, not to exceed 75 per cent of the actual and reasonable cost of the improvements, and to discharge said obligations to the extent of the proceeds realized from the sale of the bonds.

*A. H. Sweet*, for Applicant.

REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application for authority to issue applicant's first mortgage gold bonds, of the face value of \$204,000, in accordance with the provisions of applicant's deed of trust to Harris Trust and Savings Bank and Los Angeles Trust Company, dated March 1, 1909. This deed of trust provides, among other things, that applicant is entitled, as far as affects the relationship between itself and the trustee, to call upon the trustee for certification and delivery of bonds amounting to 75 per cent of the actual and reasonable cash cost to applicant of permanent extensions and improvements to its plant, properties and equipment.

In Application No. 192, in which case this Commission's order was made on September 4, 1912, applicant applied for authority to issue first mortgage bonds of the face value of \$208,000 on account of permanent additions and improvements made between March 23, 1912, and **July 31, 1912**, and for \$42,000, face value, first mortgage bonds for the acquisition of certain property amounting to \$56,216.62, which property is specified in this Commission's opinion on that application. In connection with Application No. 378, applicant now presents a statement, marked "Schedule 4," showing the nature and description of expendi-



tures for construction from July 31, 1912, to November 30, 1912, as follows:

|  |           |    |
|--|-----------|----|
| Real estate and buildings, gas department-----     | \$4,420   | 85 |
| Gas plant -----                                    | 18,770    | 97 |
| Gas mains -----                                    | 28,894    | 53 |
| Gas service -----                                  | 35,384    | 75 |
| Gas meters -----                                   | 14,185    | 42 |
| Real estate and building, electric department----- | 4,418     | 56 |
| Steam plant -----                                  | 55,251    | 67 |
| Electric plant -----                               | 28,334    | 67 |
| Street lines and wires overhead-----               | 79,871    | 27 |
| Street lines and wires underground-----            | 17,812    | 47 |
| Arc light installation-----                        | 9,688     | 46 |
| Electric service -----                             | 9,688     | 46 |
| Electric meters -----                              | 19,271    | 09 |
| Transformers -----                                 | 8,562     | 16 |
| Office building -----                              | 1,666     | 22 |
|  | <hr/>     |    |
|  | \$327,674 | 22 |

In order to secure the amount of \$204,000 as to which the applicant now asks authority to issue additional first mortgage bonds, applicant substracts from said sum of \$327,674.22 the sum of \$56,216.62, being the money expended on the items for which the Commission in Application No. 192 authorized the issue of bonds of the face value of \$42,000, and then takes 75 per cent of the remaining sum. In other words, applicant asks authority to issue bonds of the face value of \$204,000 as against additional property amounting to \$271,457.60. The remaining 25 per cent will be taken care of in some other way.

Applicant has filed with this Commission its profit and loss statement for the year ending December 31, 1912, as follows:

|  |             |    |
|--|-------------|----|
| Gross earnings -----                           | \$1,019,470 | 84 |
| Operating expenses -----                       | 507,703     | 83 |
|  | <hr/>       |    |
| Net earnings -----                             | \$511,767   | 01 |
| Bond interest -----                            | \$159,002   | 82 |
| General interest -----                         | 6,136       | 78 |
| Depreciation -----                             | 84,000      | 00 |
| Bond discount -----                            | 10,170      | 00 |
| Reorganization -----                           | 3,000       | 00 |
|  | <hr/>       |    |
|  | 262,309     | 60 |
|  | <hr/>       |    |
|  | \$249,457   | 41 |
| Preferred stock dividends-----                 | \$28,690    | 40 |
| Common stock dividends -----                   | 159,635     | 00 |
|  | <hr/>       |    |
|  | 188,325     | 40 |
|  | <hr/>       |    |
| Surplus for year ending December 31, 1912----- | \$61,132    | 01 |

Applicant last year paid a 7 per cent dividend on its entire capital stock and set aside an amount of \$84,000 for depreciation, and had remaining at the end of the year a surplus of \$61,132.01.

For further details with reference to applicant's stock and bond issues and financial condition reference is hereby made to this Commission's opinion in Application No. 192.

I do not in this opinion pass on the question as to whether or not all of the 25 per cent of expenditure in excess of the amounts for which bonds are to be issued is properly chargeable to capital account. I desire again to draw attention to an item of  $7\frac{1}{2}$  per cent for engineering credited to H. M. Byllesby & Company, the owners of the property, on all construction work, whether demanding the services of Chicago engineers or not.

The contract for the sale of applicant's bonds provides that of the amount which applicant now desires to issue, bonds of the par value of \$75,000 will net 94 per cent of their par value and the remaining bonds will net 95 per cent of their par value.

I find that the purposes for which applicant desires to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income, and submit herewith the following form of order :

**ORDER.**

San Diego Consolidated Gas and Electric Company having applied to the Railroad Commission of the State of California for the consent of the Commission to the issuance by said company of bonds of the face value of \$204,000, said bonds to be payable on the first day of March, 1939, and to bear interest at 5 per cent per annum, payable semi-annually, and secured by a trust deed or mortgage upon all the property of the company, and a public hearing having been duly held upon said application, and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of its facilities and the discharge and refunding of its obligations and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California hereby authorizes the issue by San Diego Consolidated Gas and Electric Company of \$204,000, face value, of principal of bonds of said company, bearing numbers 3,426 to 3,629, inclusive, maturing the first day of March, 1939, redeemable on March first, 1914, or on any interest date thereafter, at par, accrued interest and a premium of 5 per cent on the principal thereof, and to bear interest at 5 per cent per annum, payable semiannually, under and in pursuance of the terms of the trust deed or mortgage heretofore and on the first day of March, 1909, made and executed by said San Diego Consolidated Gas and Electric Company to Harris Trust and Savings Bank and Los Angeles Trust Company, as trustees, upon the conditions following and not otherwise, **to wit:**

1. San Diego Consolidated Gas and Electric Company shall sell said bonds hereby authorized so as to net the said company not less than

94 per cent of the par value of \$75,000 of principal thereof, and not less than 95 per cent of the par value of the principal of the remainder thereof, besides interest accrued thereon.

2. The proceeds of the sale of said bonds shall be applied only to the following purpose, that is to say, for the discharge and lawful refunding of obligations of the company heretofore incurred for the acquisition of property and the construction, completion, extension and improvement of its facilities, as specified in Schedule No. 4 attached to the application herein.

3. San Diego Consolidated Gas and Electric Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with the provisions of this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

4. San Diego Consolidated Gas and Electric Company shall file with this Commission a certified copy of the statement or certificate to be filed by it with the trustees under its said trust deed, on which statement or certificate it will receive from the trustees the bonds hereby authorized to be issued.

5. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of February, 1913.

## DECISION No. 454.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY AND PARK-GRABLE INVESTMENT COMPANY, FOR AN ORDER AUTHORIZING AND PERMITTING CONVEYANCE OF LAND BY SAID SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY TO SAID PARK-GRABLE INVESTMENT COMPANY IN THE CITY OF LA MESA, SAN DIEGO COUNTY, CALIFORNIA, IN EXCHANGE FOR LAND IN SAID CITY TO BE CONVEYED TO SAID SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY BY SAID PARK-GRABLE INVESTMENT COMPANY.

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Application No. 393.

*Decided February 11, 1913.*

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The city of La Mesa, desiring to extend Spring street so as to take off about twenty-seven feet from certain property of applicant, thereby rendering said property unfit for its present use for substation purposes, *held*, that the proposed extension of Spring street is a desirable improvement in the city of La Mesa and that the public convenience will be served by the grant of the application.

*A. H. Sweet*, for San Diego Consolidated Gas and Electric Company.  
*Mr. Reynolds*, city trustee, for City of La Mesa.

## REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application under the provisions of section 51(a) of the Public Utilities Act, providing, in part, that "no railroad corporation, street railroad corporation, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation or water corporation shall henceforth sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant or system, necessary or useful in the performance of its duties to the public \* \* \* without having first secured from the Commission an order authorizing it so to do."

San Diego Consolidated Gas and Electric Company is the owner of the north 50 feet of Lot 11 in Block 1 of the Petaluma Tract in the city of La Mesa, according to the map numbered 1061, filed in the office of the county recorder of San Diego County on October 16, 1907, and the south  $\frac{1}{2}$  of the 20-foot alley adjacent to said north 50 feet of said Lot 11, which alley has been regularly closed by proceedings taken by the board of trustees of the city of La Mesa. There is now standing upon said north 50 feet of said Lot 11 a one-story brick building which the

San Diego Consolidated Gas and Electric Company uses as a substation in connection with its business in the city of La Mesa.

The city of La Mesa desires to extend Spring street so as to take off the west 27 feet or thereabouts from the property of the San Diego Consolidated Gas and Electric Company, thereby rendering that property unfit for its present use. The Park-Grable Investment Company, which owns considerable real estate in the vicinity, and which is interested in having Spring street extended, has offered to exchange for said property of San Diego Consolidated Gas and Electric Company Lots 8 and 19 of what is known as the Mandar Tract, and thereupon to convey to the city of La Mesa that portion of the San Diego Consolidated Gas and Electric Company's present property which is necessary for the extension of Spring street. If the application is granted, the San Diego Consolidated Gas and Electric Company will move its substation to the property which it is to acquire from the Park-Grable Investment Company.

I find that the proposed extension of Spring street is a desirable improvement in the city of La Mesa and that the public convenience will be served by the grant of the application.

As the Park-Grable Investment Company is not a public utility, it is not necessary to secure this Commission's permission for the conveyance of its lands to the San Diego Consolidated Gas and Electric Company.

I recommend that the application be granted and submit herewith the following form of order:

**ORDER.**

San Diego Consolidated Gas and Electric Company having applied to this Commission for authority to transfer to Park-Grable Investment Company a certain parcel of real property situated in the city of La Mesa, California, and particularly described in the opinion which precedes this order, said property being no longer necessary and useful in the performance of its duties to the public, in return for a certain other piece or parcel of real property in the city of La Mesa, to be conveyed to said San Diego Consolidated Gas and Electric Company by said Park-Grable Investment Company, and to be used in the performance of the duties of the San Diego Consolidated Gas and Electric Company in lieu of said parcel of real property now belonging to said San Diego Consolidated Gas and Electric Company, and a public hearing having been held on said application and the Commission finding that the public convenience will be served by the grant of said application,

*It is hereby ordered* that said application be and the same is hereby granted, on the condition that said San Diego Consolidated Gas and Electric Company file with this Commission certified copies of the deed of conveyance from San Diego Consolidated Gas and Electric Company to Park-Grable Investment Company and of deed of conveyance from

Park-Grable Investment Company to San Diego Consolidated Gas and Electric Company and of deed of conveyance from Park-Grable Investment Company to the city of La Mesa.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, this 11th day of February, 1913.

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DECISION No. 455.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO AND SOUTHEASTERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING CHANGE IN THE LOCATION OF ITS PASSENGER DEPOT, NOW LOCATED AT TENTH AND N STREETS IN SAN DIEGO TO THIRTEENTH AND N STREETS, AND FOR AN ORDER AUTHORIZING THE ABANDONMENT OF AN AGENCY AT FIFTH AND L STREETS IN SAN DIEGO, AND THE TRANSFER OF PASSENGER AND FREIGHT FACILITIES FROM FIFTH AND L STREETS TO THIRTEENTH AND N STREETS.

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Application No. 366.

*Decided February 11, 1913.*

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Applicant having petitioned for authority to change the location of its present depot at Tenth and N streets in the city of San Diego to the northwest corner of Thirteenth and N streets, and to remove its freight and passenger facilities now at Fifth and L streets to said northwest corner of Thirteenth and N streets, and to abandon its agency at Fifth and L streets, *held*, that public convenience and the economical and advantageous handling and development of applicant's business will be promoted by the grant of the authorization as requested.

*H. L. Titus*, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application to change the location of a depot, to abandon an agency and to remove passenger and freight facilities in the city of San Diego. The application is made under the provisions of this Commission's General Order No. 30, reading in part as follows:

“It is further ordered that no railroad corporation shall move or abandon any depot or station building, or abandon an agency

at any depot, or take up or discontinue the use of any siding, spur, or other track upon which passengers or freight have been received or discharged, without first having made application to and received the consent of this Commission; provided, however, that this section shall not apply to temporary tracks, nor to the extension or alteration of tracks which shall continue to serve the purposes for which they were constructed, nor to tracks which have been constructed under special contracts, wherein time limits or other conditions affecting their permanency are specified."

The applicant, San Diego and Southeastern Railway Company, is a consolidation of the San Diego Southern and the San Diego and Cuyamaca Railway Companies. The San Diego Southern, in turn, is a consolidation of the National City and Otay Railway Company and the Coronado Belt Line. The National City and Otay Railway Company operated a line of steam railway between Fifth and L streets in San Diego and Tia Juana on the Mexican boundary line, passing through National City, Chula Vista, Otay and Nestor. From National City a branch line ran through the Sweetwater Valley to the Sweetwater Dam and a few miles beyond to La Presa. The Coronado Belt line operated a line of steam railway running from San Diego through National City to the south and thence skirting the bay of San Diego to the south and west and thence running north along the narrow strip of land between the bay and the ocean to Coronado. The San Diego and Cuyamaca Railway Company operated a line of steam railway running from San Diego easterly through or near La Mesa, El Cajon and Lakeside to Foster.

The National City and Otay Railway Company had its freight and passenger terminus in San Diego in rented quarters on L street between Fifth and Sixth streets. The company did its freight business in San Diego largely on L street in front of its ticket office. The San Diego and Cuyamaca Railway Company did its freight and passenger business in San Diego at its depot at Tenth and N streets.

After the consolidation, the National City and Otay Railway Company's line of railway was electricized through National City and Chula Vista as far south as Otay. Steam trains are still operated, but the railway's passenger business thereon is confined to transporting passengers from San Diego to the territory between Otay and Tia Juana and to the Sweetwater Valley and in the reverse direction. The remaining territory formerly served by the National City and Otay Railway as to passengers is now served by applicant's electric interurban cars using the tracks of the National City and Otay Railway, and no question as to this traffic is involved in this proceeding. The applicant herein has erected a freight depot at the southwest corner of Thirteenth and N

streets and is now handling there all the freight formerly handled by the National City and Otay Railway Company at Fifth and L streets and by the San Diego and Cuyamaca Railway Company at its depot at Tenth and N streets, with the exception of certain carload lots.

It is now proposed to make the following further changes:

(1) To move the old Cuyamaca depot from its present location at Tenth and N streets to the northwest corner of Thirteenth and N streets.

(2) To move the freight and passenger terminus of the old National City and Otay Railway from Fifth and L streets to the said northwest corner of Thirteenth and N streets.

(3) To move the ticket agency now at Fifth and L streets to the proposed passenger depot at Thirteenth and N streets.

The following reasons, among others, are urged in favor of the proposed changes:

1. The applicant desires to use the site of the old Cuyamaca depot for yard track development.

2. It is said to be dangerous for passengers, by reason of the large number of tracks which they must cross, to go to and from the present Cuyamaca depot. At the proposed new site, the passenger track will be directly in front of the depot, so that passengers going to or from trains will have no tracks to cross.

3. Considerable confusion is said to have arisen from the fact that applicant has had two passenger termini, one at Fifth and L streets and the other at Tenth and N streets.

4. It is urged that the growth of the city in other directions, the establishment of commercial and industrial houses in the vicinity, the relocation and enlargement of gas plants, and the altered direction of street car traffic have combined to render the locations of applicant's termini both at Fifth and L streets and Tenth and N streets inconvenient and undesirable.

If the proposed changes are authorized, passengers formerly using the facilities at Fifth and L streets will, if going south, take the interurban electric, transferring to the steam trains at Twenty-fourth street in National City, and those going north will transfer from the steam trains to the interurban electric at the same point, all without extra fare. For all these persons the proposed arrangement will have considerable advantage over the present arrangement for the reason that the interurban electric will take them from and to the heart of the business district of San Diego, whereas the present terminus at Fifth and L streets is located on the water front, some seven or eight blocks south of the business center of the city. Passengers heretofore using the old Cuyamaca depot and walking to or from the same will be slightly inconvenienced for the reason that the proposed new site will be about two



blocks further out from the city's business center than the present depot. Applicant, however, has offered to place the sidewalks in the vicinity of the proposed new location in good condition, so that walking will be both safer and more convenient for persons walking to and from the depot. Persons using the street cars to and from the old Cuyamaca line will not be inconvenienced by the change, but, on the contrary, will avoid crossing a large number of tracks in going to or from the depot.

I am convinced that the convenience of by far the largest number of passengers using the applicant's lines of railway will be promoted by the proposed changes. Applicant will derive substantial benefit from the changes in the increase of its yard development and the concentration of its depot facilities without detriment or disadvantage to its patrons. The step is one of progress in the handling and development of applicant's business. Although notice of the hearing was published in the newspapers and posted both in applicant's cars and depots, no one appeared to oppose the application. I recommend that the application be granted and submit herewith the following form of order:

**ORDER.**

San Diego and Southeastern Railway Company having applied for authority to change the location of its present depot at Tenth and N streets in the city of San Diego to the northwest corner of Thirteenth and N streets and to remove its freight and passenger facilities now at Fifth and L streets to said northwest corner of Thirteenth and N streets, the tracks at Fifth and L streets, however, to remain as heretofore, and to abandon its agency at Fifth and L streets, and a public hearing having been held on said application, and the Commission finding that public convenience and the economical and advantageous handling and development of applicant's business will be promoted by the grant of the authorization as requested,

*It is hereby ordered* that said application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of February, 1913.

## DECISION No. 456.

IN THE MATTER OF THE APPLICATION OF DOMESTIC  
WATER COMPANY OF SANTA MARIA, FOR AN ORDER  
AUTHORIZING ISSUE OF STOCKS AND BONDS.

Application No. 189.

IN THE MATTER OF THE APPLICATION OF SANTA MARIA  
WATER WORKS FOR AN ORDER AUTHORIZING THE  
SALE OF THE WHOLE OF ITS PLANT AND THE SYSTEM  
TO DOMESTIC WATER COMPANY OF SANTA MARIA.

Application No. 228.

*Decided February 11, 1913.*

The Domestic Water Company of Santa Maria, desiring to purchase the entire water works system of Santa Maria Water Works, petitioned for approval to issue \$25,000 capital stock and \$75,000 of 6 per cent first mortgage bonds in payment therefor; also for approval of issue of \$30,000 additional bonds, the proceeds to be used in making extensions and betterments to the property acquired. The Santa Maria Water Works made application for permission to sell. Valuations of the property were submitted by the applicants, by the city of Santa Maria which was permitted to be heard, and by the Engineering Department of the Commission.

Applicants included in their estimates valuations of "developed, tried and sufficient water supply" and also "established and going business concern."

*Held.* For the reason, if for no other, that applicants were unable to introduce evidence which would warrant a consideration of these items in determining the present value of the property, said items should be disregarded.

*Held.* The present value of the physical properties to be transferred is \$74,968, in the purchase of which the Domestic Water Company may issue \$25,000 capital stock at par and \$55,000 bonds at not less than 90 per cent of the face value thereof; that \$30,000 additional bonds may be issued and the proceeds used for extensions and betterments.

*T. T. C. Gregory*, for Applicants.

*Thomas Preisker*, for the City of Santa Maria.

*W. C. Oakley* and *A. F. Fugler*, for the board of trustees of the City of Santa Maria.

## REPORT OF THE COMMISSION.

*GORDON, Commissioner.*

In Application No. 228, Santa Maria Water Works requests permission to sell the whole of its plant and system at Santa Maria to Domestic Water Company of Santa Maria, and the latter company requests permission to purchase this plant and system.

In Application No. 189, the Domestic Water Company of Santa Maria seeks authority to issue stocks and bonds as follows:

1. All of its capital stock, which consists of 250 shares of the par value of \$25,000, and also 75 first mortgage 20-year 6 per cent gold bonds of the denomination of \$1,000 each, secured by a deed of trust to the First Federal Trust Company of San Francisco, the proceeds derived from the sale of this stock and these bonds to be used to pay for the plant and system at Santa Maria now owned by the Santa Maria Water Works.

2. Thirty first mortgage 20-year 6 per cent gold bonds of the denomination of \$1,000 each, the proceeds of which are to be used in making needed extensions and improvements to the water system which is the subject of this contemplated transfer.

I will consider first the question of the transfer of the water system at Santa Maria by the Santa Maria Water Works to the Domestic Water Company of Santa Maria.

This water system supplies the inhabitants of Santa Maria with water, both for domestic and irrigation purposes. The system has been constructed and operated by one Reuben Hart, who has conducted the business under the name of the Santa Maria Water Works. Mr. Hart has kept no accounts of the moneys he has expended from time to time in acquiring and extending this water system, so that no inventories are available from which the original cost of the water system can be determined. There was filed, however, with Application No. 189, an inventory of the property as estimated by applicants, which inventory placed the value of the property to be transferred at \$110,178. This appraisal included two items of "developed, tried and sufficient water supply" and also "established and going business concern," which together were given a value of \$20,000. Subsequent to the hearing, applicants filed a revised inventory of the property of the Santa Maria Water Works, which placed the value at \$100,906, including \$10,000 for the two items above mentioned. Applicants later made a second revision of the original inventory of this property, placing the value of the same at \$91,088.95, including in this valuation \$10,000 for the same two items of "developed, tried and sufficient water supply" and also "established and going business concern." I have segregated these last two items in each of the valuations submitted for the reason that at the hearing upon these applications a careful inquiry was made into these two items, and it was found that applicants were unable to introduce evidence which would warrant a consideration of these items in determining the present value of this property. I am of the opinion, therefore, that for this reason, if for no other, these two items of "developed, tried and sufficient water supply" and also "established and going business concern" should be disregarded in ascertaining the present value of the Santa Maria Water Works.

The city of Santa Maria was represented at the hearing and members of the Board of Trustees asked permission to check over the estimates of the value of the property which were submitted by applicants and to file with the Commission an appraisal of the property on behalf of the city. This privilege was accorded the board of trustees of Santa Maria and the board of trustees subsequent to the hearing, filed with the Commission an appraisal of the property comprising the water system at Santa Maria, which appraisal amounted to \$57,396.80. I am of the opinion that this appraisal is unreasonably low.

The Commission's engineering department made a very careful inspection of the water system at Santa Maria, and after allowing for depreciation of the system since its construction, has estimated the present value of the physical property comprising the water system at Santa Maria to be \$74,968. I am of the opinion that this amount represents with reasonable accuracy, the present value of the physical properties which are to be transferred.

Upon the assumed valuation of \$110,178, as representing the value of the property to be transferred, the Domestic Water Company of Santa Maria requests permission to issue all of its capital stock of the face value of \$25,000 and also 75 of its first mortgage 20-year 6 per cent gold bonds of the face value of \$75,000, the proceeds of which it desires to give in exchange for the property acquired. In view of the reduced valuation as found by the Commission, applicant's request cannot be granted in the form in which it is made, though I recommend that it be granted with certain modifications which I shall mention.

The Domestic Water Company of Santa Maria contemplates issuing its stock so as to obtain in proceeds the par value thereof, and I recommend that applicant be permitted to issue all of its capital stock upon these terms and that the proceeds be used to pay in part for the acquisition of the water system at Santa Maria. The balance of the purchase price, according to applicant's intention, is to be procured from the sale of bonds. Applicant stated at the hearing that it expected to dispose of these bonds at a figure which would net at least 90 per cent of the face value thereof, and possibly as high as 95 per cent of the face value. I believe that if applicant is permitted to dispose of 55 of its first mortgage 20-year 6 per cent gold bonds of the face value of \$55,000, and succeeds in disposing of them at the figure contemplated, applicant will procure the balance of what I believe to be a fair price to be given in exchange for the property of the water system now owned by Santa Maria Water Works, and I recommend that applicant be permitted to issue bonds to this amount for this purpose.

I will consider now the second request of the Domestic Water Company of Santa Maria, namely, that it be permitted to issue 30 of its first mortgage 20-year 6 per cent gold bonds of the face value of \$30,000,

the proceeds of which are to be used in making needed extensions and improvements in the water system at Santa Maria.

At the hearing applicant filed a detailed estimate of the contemplated extensions and improvements, a summary of which estimate is as follows:

|  |             |
|--|-------------|
| 1. Additional supply and storage-----                      | \$9,108 00  |
| 2. Additional pumping system-----                          | 6,545 00    |
| 3. Additional distributing and fire protection system----- | 7,205 00    |
| 4. Additional irrigating system-----                       | 7,142 00    |
| Total -----  | \$30,000 00 |

I believe that the estimate submitted by applicant is reasonable and that applicant should be allowed to make these needed extensions and improvements in the system. I made a careful inquiry into the present and prospective gross and net earnings of applicant, and am satisfied that applicant will be readily able to pay the interest charges upon the bonds herein authorized, and also that after the extensions and improvements in plant of applicant have been made, there will be a safe margin of security above the face value of all the bonds outstanding.

I submit herewith the following form of order:

#### ORDER.

The Santa Maria Water Works having in Application No. 228, requested permission to sell and the Domestic Water Company of Santa Maria, having in the same application requested permission to buy the water system now owned by the Santa Maria Water Works, and the Domestic Water Company of Santa Maria, having in Application No. 189, requested permission to issue all of its capital stock, consisting of 250 shares of the face value of \$25,000, and also to issue 75 of its first mortgage 20-year 6 per cent gold bonds of the denomination of \$1,000 each, secured by a trust deed to the First Federal Trust Company of San Francisco, the proceeds of which stock and bonds are to be used to pay for the property purchased from the Santa Maria Water Works, and having requested permission to make a further issue of bonds of the face value of \$30,000, the proceeds of which are to be used in making certain needed extensions and improvements in the water system purchased, and these two applications having been consolidated for hearing, and the Commission being of the opinion that public convenience and necessity will be subserved by the sale and purchase of said property, and that the purposes for which said stock and bonds are to be issued are not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted, with certain modifications,

*It is hereby ordered—*

1. That Santa Maria Water Works be and it hereby is authorized to sell and that Domestic Water Company of Santa Maria be, and the same hereby is, authorized to purchase the whole of the plant and system of

the Santa Maria Water Works on the terms and conditions hereinafter specified.

2. That Domestic Water Company of Santa Maria be, and the same hereby is, authorized to issue the whole of its capital stock, consisting of 250 shares of the par value of \$25,000, upon the following condition, and not otherwise, to wit:

(a) The stock herein authorized shall be issued so as to net the Domestic Water Company of Santa Maria the par value thereof, and the proceeds of the stock so issued shall be used in acquiring the property of the Santa Maria Water Works.

3. That Domestic Water Company of Santa Maria be and the same hereby is authorized to issue 85 of its first mortgage 20-year 6 per cent gold bonds of the denomination of \$1,000 each, secured by deed of trust to the First Federal Trust Company of San Francisco, upon the following conditions, and not otherwise, to wit:

(a) The bonds herein authorized to be issued shall be issued so as to net the Domestic Water Company of Santa Maria not less than 90 per cent of the face value thereof.

(b) The proceeds derived from the sale of 55 of the bonds herein authorized shall be used in acquiring the property of the Santa Maria Water Works.

(c) The proceeds of the remaining 30 bonds herein authorized shall be used in paying for the contemplated extensions and improvements to the water plant at Santa Maria, according to the estimates filed at the hearing upon these applications and marked "Exhibit D to Application No. 189," which exhibit is hereby made a part of this order.

4. The Domestic Water Company of Santa Maria shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said stock and bonds herein authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

5. The amount herein authorized to be paid for the property of the Santa Maria Water Works shall not be taken before this Commission, or any other public authority, as representing for rate fixing or other purposes the present value of the property of the Santa Maria Water Works.

6. The authority hereby given to issue stock and bonds shall apply only to stock and bonds issued by applicant on or before the thirtieth day of September, 1913.

7. The payment of the minimum fee prescribed in section 57 of the Public Utilities Act, shall be a condition precedent to the effectiveness of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of February, 1913.

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DECISION No. 457.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF THE RIGHTS AND PRIVILEGES GRANTED TO IT BY RESOLUTION No. 418 OF THE CITY OF RICHMOND.

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Application No. 379.

*Decided February 11, 1913.*

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REPORT OF THE COMMISSION.

\* San Francisco-Oakland Terminal Railways having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the city of Richmond, in its Resolution No. 418, passed on November 25, 1912, by which resolution applicant is given permission, upon certain conditions, to lay down and use for a street railroad a single track switch, with its necessary poles and wires, over, along and upon certain portions of Standard avenue and a private right of way in the city of Richmond, and it appearing that the rights granted to applicant in this resolution are to be exercised in territory already served by applicant, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by San Francisco-Oakland Terminal Railways of the rights and privileges granted to said company by the city of Richmond, in its Resolution No. 418, passed on November 25, 1912.

By order of the Railroad Commission.

Dated at San Francisco, California, this 11th day of February, 1913.

## DECISION No. 458.

IN THE MATTER OF THE APPLICATION OF SARATOGA  
TELEPHONE COMPANY FOR PERMISSION TO INCREASE  
RATES.

Application No. 133.

*Decided February 14, 1913.*

The Saratoga Telephone Company, a "farmers' line company," made application for permission to increase its rates 25 cents per month so as to enable it to furnish continuous service. Most of its present patrons at present are paying \$1.25 per month and a few \$1.50 per month. The Pacific Telephone and Telegraph Company, professing to render service in the same territory, was made a party to the proceedings. The unusual conditions giving rise to the necessity of this application, and which may not be briefly stated in a head note, were found to have resulted from the practices of The Pacific Telephone and Telegraph Company.

*Held*, The fact that these conditions now require adjustment is no reasonable excuse for depriving a community of such advantages it may have won by continual effort and heavy outlay in the effort to secure a service which a public utility professes to give. One of such conditions is the actual necessity for continuous service. It is the duty of The Pacific Telephone and Telegraph Company to do in fact the things which it professes to do, and in this instance to meet those normal duties, responsibilities and expenses which it has been imposing on others.

*Held*, That the application of the Saratoga Telephone Company should be denied.

*Held*, That The Pacific Telephone and Telegraph Company forthwith render telephone service in and about Saratoga at the rates on file with the Commission; that it immediately file with this Commission rates covering those normal classes of telephone service which are now not provided for in its rate sheet on file with this Commission; and that it pay the entire expense of operating its exchange at Saratoga, including the wages of operators sufficient to maintain an adequate twenty-four hour service.

*L. D. Bohnett*, for Saratoga Telephone Company.

*C. P. Merrill*, for The Pacific Telephone and Telegraph Company.

## REPORT OF THE COMMISSION.

*GORDON, Commissioner.*

This application is for permission to increase telephone rates. A public hearing was held and the testimony developed, in conjunction with the investigations of this Commission, disclosed a peculiarly conflicting and illogical situation, a brief review of which is essential, preliminary to the order which I shall recommend in this case.

The Saratoga Telephone Company is an organization brought into existence and maintained to effect a telephone service which it was apparently impossible to secure from The Pacific Telephone and Telegraph Company in the past, which, however, has maintained a pretense of serving this field. For this reason, under an order to show cause, The



Pacific Telephone and Telegraph Company was formally made a party in these proceedings. The testimony makes plain that the individuals involved in the Saratoga Telephone Company had no desire to enter the telephone business, and that they have not continued in the telephone field as a business proposition, but have been practically compelled to invest money in lines and facilities and to collect regular charges for the maintenance thereof in order that they might have and enjoy a telephone service which ought to have been available without any such necessity on their part.

In every essential part, the system of the Saratoga Telephone Company is what is generally termed in this State a "farmers' line company." This is a classification used for a service usually reaching rural development under which the telephone users build their own lines to the town limits of the nearest telephone exchange, supply their own instruments, maintain both and make connection with the exchange system at the town limits, thereafter securing switching service with an exchange system at a very nominal charge. It is and has been a normal field in which this service has adequately met one of the difficult problems having to do with telephone expansion.

At Saratoga, the responsibilities above described, *i. e.*, the building of lines to the town limits, the supplying of instruments and maintenance thereof, have been most unreasonably enlarged, to wit, the Saratoga Telephone Company has been required to build its lines clear into the exchange switchboard and has further been burdened with expenses having to do with the conduct of the exchange service. The only concession granted them has been the use of a certain number of The Pacific Telephone and Telegraph Company's substation instruments.

The Saratoga Telephone Company has approximately 144 subscribers. Assuming that the subscribers take advantage of their privilege of paying their accounts within a specified time to secure a minimum rate (and the testimony indicates that they have generally done this), approximately 141 of that number pay a rate of \$1.25 per month and three pay a rate of \$1.50 per month; but the contracts involving the service are actually written with The Pacific Telephone and Telegraph Company, and of the rate paid, The Pacific Telephone and Telegraph Company collects \$1.00 per month from each, the Saratoga Telephone Company being permitted to collect the remaining 25 cents or 50 cents, as the case may be. Out of the \$1.00 collected by The Pacific Telephone and Telegraph Company, it has allowed 25 per cent as an agent's commission or a contribution toward making up a guaranteed salary for the operator operating the exchange board of \$50, involving, in the past, the necessity on the part of the Saratoga Telephone Company of making up the balance of the operator's salary, which involved, as at July, 1912, a monthly expenditure of about \$14.

After making up guaranteed salary for the operator in the central exchange, the Saratoga Company was left approximately \$22.75 per month, out of which it further obligated itself to pay \$12.50 per month toward the operator's living quarters, leaving a balance of \$10.25 per month to cover operating maintenance and other costs of the Saratoga Telephone Company.

The Saratoga Telephone Company now petitions this Commission for permission to raise its rates 25 cents per month in order that additional revenue may be available with which to pay for an additional operator in the Saratoga exchange, so that continuous service may be enjoyed.

The service which the Saratoga Telephone Company has had has been inclusive of certain free switching privileges with San Jose; this is a matter that will be discussed further on in this opinion. The Pacific Telephone and Telegraph Company has continuously professed to serve the territory in and about Saratoga. The testimony proves conclusively that years of unsatisfactory and unavailing negotiations have gone forward between this community and The Pacific Telephone and Telegraph Company in the effort to secure from that company some measure of compliance with its professions. The Pacific Telephone and Telegraph Company has on file with this Commission a rate sheet setting out the service which that company professes to give in this field. This rate sheet bears the date of October 15, 1907, and without reference to the controversy, the history of which was brought out in the testimony in this case antedating 1907, the rate sheet of October 15, 1907, being the effective rates of The Pacific Telephone and Telegraph Company at this point, defines the obligations of this company as a public utility in this community. The Pacific Telephone and Telegraph Company professes to render exchange service within an exchange radius of one mile from the central office at Saratoga. The schedule provides for—

#### BUSINESS SERVICE.

|   | Wall.  | Desk.  |
|---|--------|--------|
| Individual line, unlimited service..... | \$2 50 | \$2 50 |
| Four party, unlimited service.....      | 1 50   | 2 00   |
| Extension set .....                     | 1 00   | 1 00   |

#### RESIDENCE SERVICE.

|   |        |        |
|---|--------|--------|
| Individual line, unlimited service..... | \$2 50 | \$2 50 |
| Four party, unlimited service.....      | 1 50   | 2 00   |
| Extension set .....                     | 1 00   | 1 00   |

with the usual charges for mileage beyond the exchange radius for individual, two-party and four-party service; also for farmer-line service, which is the service I have first referred to in this opinion, *i. e.*

a rural service under which the subscriber or subscribers build the line or lines, furnish their own instruments and receive exchange service at a nominal price, varying with the size of the exchange to which they are connected. In the case of Saratoga, the effective rate for this service would be 25 cents per month, and at that rate the Saratoga subscribers to the Saratoga telephone system are entitled to all of the exchange service held out by The Pacific Telephone and Telegraph Company for Saratoga Exchange.

We find, as a fact, that The Pacific Telephone and Telegraph Company is giving no exchange service whatever in Saratoga other than is comprised by a single toll station in the office of its exchange; that it has, contrary to its professed policy under the rate sheet defining its responsibilities, either permitted, encouraged or forced the Saratoga Telephone Company not only to build up to the usual point designated for farmer lines, but that the Saratoga Telephone Company has been compelled to build into the switchboard, and, as a result, such facilities as are in existence for handling business within the normal exchange radius are the property of the Saratoga Telephone Company. The Pacific Telephone and Telegraph Company has been and is now collecting from Saratoga subscribers, under individual contracts with them, the sum of \$1.00 per month, and whereas the Saratoga Telephone Company has filed rates ranging from \$1.25 to \$1.50 per month, as a matter of fact, these so-called rates are inclusive of the \$1.00 collected by The Pacific Telephone and Telegraph Company and the remaining 25 cents or 50 cents is collected by the Saratoga Telephone Company independently of the operations of The Pacific Telephone and Telegraph Company. The Pacific Telephone and Telegraph Company, as the company professing to give service at Saratoga, has permitted a situation to develop by which the operator in charge of this professed service has been and is being partially paid directly by the Saratoga Telephone Company. In addition to this unwarranted and unreasonable demand, condition or result, the situation has compelled the Saratoga Telephone Company to contribute \$12.50 per month to meet certain living quarter expenses having to do with the maintenance of the Saratoga telephone business of The Pacific Telephone and Telegraph Company, and whereas a demand for twenty-four hour service has normally developed, The Pacific Telephone and Telegraph Company has likewise included this necessity among the burdens to be met by its subscribers on the lines of the Saratoga Telephone Company, and, as a result, the Saratoga Telephone Company has felt it necessary to petition this Commission to raise its rates 25 cents per month in order that it might pay the additional wages necessary for an additional telephone operator to conduct the telephone business which The Pacific Telephone and Telegraph Company professes to give in and for the exchange of Saratoga.

I do not see my way clear to granting a raise in the rates of a company now paying from \$1.25 to \$1.50 per month for a service which they are normally entitled to for 25 cents per month, in order that they may further increase the present unreasonable charge to pay the wages of an operator to handle the normal business of The Pacific Telephone and Telegraph Company. I therefore recommend that the application for permission to increase telephone rates be denied.

The fact that the normal status of the Saratoga Telephone Company as a farmer-line company includes the use of certain substation equipment, which, under normal conditions, they would have supplied and which is now the property of The Pacific Telephone and Telegraph Company, is not in and of itself of any particular consequence. It is a common thing for The Pacific Telephone and Telegraph Company, in so far as circumstances will permit, to withdraw its instruments under like conditions, but this is not always the case, under which circumstances it is a practice of that company to charge 12½ cents per month for the use of its substation equipment. For such subscribers, then, of the Saratoga Telephone Company as may be using instruments which are the property of The Pacific Telephone and Telegraph Company, a charge in accordance with usual practice is a matter for private negotiations between such subscribers and The Pacific Telephone and Telegraph Company; otherwise, the Saratoga Telephone Company is entitled to full exchange service at Saratoga exchange rates for any and all subscribers on its lines. It is the duty of The Pacific Telephone and Telegraph Company to maintain and render exchange service such as it professes to render and as is defined by the rate sheet filed with this Commission. The fact remains that this rate sheet itself does not provide for several of the normal classes of telephone development, and for this reason I shall recommend that The Pacific Telephone and Telegraph Company complete its rate sheet by filing rates covering these classes of development.

A supplemental rate sheet, likewise on file with this Commission and effective for Saratoga exchange concurrently with exchange rates, is as follows:

“Saratoga subscribers are entitled to free switching to San Jose from Saratoga and free switching from San Jose to Saratoga, providing they make switches from San Jose central office.

“San Jose subscribers and non-subscribers pay rate of 5 cents per switch for switches to Saratoga from San Jose.”

This condition is a part of the Saratoga rates, and is effective in the case of all subscribers regardless of classification. This condition covers a service that is normally a part of The Pacific Telephone and Telegraph Company's toll system, and, as such, is and will be subject to such change or possible elimination as may result from this Commission's final deci-

sion in the matter of an application now pending for approval of a general basic toll rate. Such other rates and conditions of service as have been referred to do not normally include this service. This factor in the situation is thus eliminated in so far as the present cause is concerned.

By its administration of the affairs of this exchange in the past, The Pacific Telephone and Telegraph Company has permitted the development of the unreasonable conditions which I have pointed out. That adjustment is now required is no reasonable excuse for depriving a community of such advantages as it may have won by continual effort and heavy outlay in the effort to secure a service which a public utility professes to give. One of the conditions in this exchange is the actual necessity for continuous service. It is the duty of The Pacific Telephone and Telegraph Company to do in fact the things which it professes to do, and, in this instance, to meet those normal duties, responsibilities and expenses which it has been imposing on others.

I therefore submit the following form of order :

**ORDER.**

The Saratoga Telephone Company of Saratoga, Santa Clara County, California, having made application for permission to increase rates, and The Pacific Telephone and Telegraph Company having been formally made a party to these proceedings under an order to show cause, and a public hearing having been held thereon,

*It is hereby ordered* that the application of the Saratoga Telephone Company be and the same is hereby denied ;

*And be it further ordered* that The Pacific Telephone and Telegraph Company forthwith render telephone service in and about Saratoga at the rates on file with this Commission ; that it immediately file with this Commission rates covering those normal classes of telephone service which are now not provided for in its rate sheet on file with this Commission ; and that it pay the entire expense of operating its exchange at Saratoga, including the wages of operators sufficient to maintain an adequate twenty-four hour service ;

*And be it further ordered* that if the Saratoga Telephone Company and The Pacific Telephone and Telegraph Company cannot agree upon their service and business relations in and about Saratoga, they shall so notify this Commission within sixty days from the date of this order, whereupon this Commission will issue a supplemental order covering the subject.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of February, 1913.

## DECISION No. 459.

IN THE MATTER OF THE APPLICATION OF THE IMPERIAL  
VALLEY GAS COMPANY FOR AN ORDER AUTHORIZING  
THE ISSUE AND SALE OF BONDS.

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Application No. 164.*Decided February 15, 1913.*

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**SUPPLEMENTAL ORDER.**

## REPORT OF THE COMMISSION.

Authority having been given to Imperial Valley Gas Company, by order dated January 8, 1913, in the matter entitled as above, to issue \$154,500, face value, of principal of bonds on the conditions in said order specified, including the condition that before the bonds authorized might issue, applicant should first have filed with this Commission evidence satisfactory to the Commission to the effect that applicant has the lawful authority to lay its mains and construct the extensions specified in the application; and

Whereas said Imperial Valley Gas Company has now filed with this Commission a certified copy of resolution of the board of supervisors of Imperial County, dated February 3, 1913, granting to said Imperial Valley Gas Company permission to lay and construct and maintain a system of gas pipes and pipe lines under and across the public roads and highways in the county of Imperial from the city of El Centro to Brawley, the city of El Centro to Calexico, and from the city of El Centro to Holtville, along the routes in said permit more specifically designated, being the routes along which applicant planned to lay and construct and maintain the system of gas pipes and pipe lines referred to in connection with its said application,

*It is hereby ordered* that said Imperial Valley Gas Company may now issue the bonds authorized in said Application No. 164, subject to the conditions in said order specified.

Dated at San Francisco, California, this 15th day of February, 1913.

## DECISION No. 460.

IN THE MATTER OF THE APPLICATION OF GEORGE H. BIXBY AND LONG BEACH CONSOLIDATED GAS COMPANY FOR AN ORDER AUTHORIZING THE TRANSFER OF A FRANCHISE GRANTED TO GEORGE H. BIXBY, BY THE COUNTY OF LOS ANGELES IN ORDINANCE No. 315, N. S.

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Application No. 399.

*Decided February 15, 1913.*

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## REPORT OF THE COMMISSION.

The board of supervisors of the county of Los Angeles having, in Ordinance No. 315, N. S., adopted on October 7, 1912, granted to George H. Bixby a franchise to lay, construct, maintain and operate a gas distributing system under, along and across certain streets, alleys and public places in the county of Los Angeles, and said George H. Bixby having applied to this Commission for an order authorizing him to transfer said franchise to Long Beach Consolidated Gas Company and Long Beach Consolidated Gas Company having joined in said application, and it appearing to the Commission that public convenience and necessity will be subserved by the transfer of said franchise, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby ordered* that the above entitled application be and the same hereby is granted.

By order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of February, 1913.

## DECISION No. 461.

IN THE MATTER OF THE APPLICATION OF LONG BEACH CONSOLIDATED GAS COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED BY THE BOARD OF SUPERVISORS OF LOS ANGELES COUNTY IN ITS ORDINANCE No. 315, N. S.

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Application No. 398.

*Decided February 15, 1913.*

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## REPORT OF THE COMMISSION.

The board of supervisors of Los Angeles County having, in Ordinance No. 315, N. S., adopted on October 7, 1912, granted to George H. Bixby a franchise to lay, construct, maintain and operate a gas distributing system under, along and across certain streets, alleys and public places in the county of Los Angeles, and this Commission having on February 15, 1913, made its order in Application No. 399, authorizing the transfer of said franchise from George H. Bixby to Long Beach Consolidated Gas Company, and Long Beach Consolidated Gas Company having applied to this Commission for a certificate that public convenience and necessity require the exercise by it of the rights and privileges granted by the board of supervisors of Los Angeles County in said Ordinance No. 315, N. S., and it appearing that the territory covered by said franchise is contiguous to the city of Long Beach, which is already served by applicant, and also that said territory is not at present served by a public utility of like character, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by Long Beach Consolidated Gas Company of the rights and privileges granted by the board of supervisors of Los Angeles County in its Ordinance No. 315, N. S., adopted October 7, 1912.

By order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of February, 1913.



## DECISION No. 462.

IN THE MATTER OF THE APPLICATION OF THE MOUNTAIN POWER COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE CONSTRUCTION OF AN ELECTRICAL PLANT IN THE COUNTY OF DEL NORTE, CALIFORNIA, AND THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF A FRANCHISE, TO BE HEREAFTER OBTAINED BY THE PETITIONER.

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Application No. 264.

*Decided February 15, 1913.*

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## ORDER OF DISMISSAL.

## REPORT OF THE COMMISSION.

Mountain Power Company having on February 8, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of February, 1913.

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• DECISION No. 463.

IN THE MATTER OF THE APPLICATION OF HUGH A. BOYLE FOR AN ORDER PROVIDING FOR A MINIMUM MONTHLY CHARGE FOR WATER FURNISHED TO CONSUMERS AT TIBURON, CALIFORNIA.

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Application No. 375.

*Decided February 15, 1913.*

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## ORDER OF DISMISSAL.

## REPORT OF THE COMMISSION.

Hugh A. Boyle having on February 13, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of February, 1913.

IN THE MATTER OF THE APPLICATION OF VALLEJO AND  
NORTHERN RAILROAD COMPANY FOR AN ORDER OF  
THE RAILROAD COMMISSION OF THE STATE OF CALI-  
FORNIA, TO SELL, ASSIGN AND DISPOSE OF THE WHOLE  
OF ITS RAILROAD SYSTEM AND PROPERTIES TO  
NORTHERN ELECTRIC RAILWAY COMPANY.

*Decided February 18, 1913.*

*T. T. C. Gregory*, for Applicant.

EDGERTON, *Commissioner.*

The Northern Electric Railway Company is engaged in the operation of a standard gauge electric railway in the counties of Glenn, Butte, Sutter, Yuba, and Sacramento, with several branches in the counties named, and its financial condition is set out in the opinion and order in Application No. 246, heretofore made by this Commission.

It has always been the purpose to make this road between Sacramento and Vallejo a part of the system of the Northern Electric Railway

Company and the organization of applicant as a separate corporation was had for the purpose of conveniently financing the construction of this branch of the system. It is now proposed to turn over all of the property, franchises, etc., owned by applicant to the Northern Electric Railway Company, which will complete the construction and thereafter operate this property as part of its whole system.

In Application No. 246, by the Northern Electric Railway Company, bonds were authorized to be issued of which \$5,500,000 face value were to be used for the acquisition of property and the construction of a line from Sacramento to Vallejo, and the property herein set out, permission for the transfer of which to said Northern Electric Railway Company is asked, was part of the property to be acquired with the proceeds of the sale of said bonds.

At the hearing had upon the application herein, testimony was introduced in behalf of applicant that the property proposed to be transferred had a present value of \$1,800,000. However, it is proposed to transfer this property at its actual cost, and an inspection of the accounts and supporting vouchers of applicant disclosed that the cost of this property is slightly in excess of \$800,000. Attached to the application herein is an agreement entered into between applicant and the Northern Electric Railway Company providing for the transfer herein asked to be authorized and this agreement sets out as a consideration for such transfer, the delivery by said Northern Electric Railway Company of \$1,000,000 face value of the bonds authorized to be issued in Application No. 246. There is a further consideration named of the transfer to applicant of \$2,000,000 of the capital stock of the Northern Electric Railway Company, but as this stock was issued long prior to March 23d, and is owned and held by individuals, it need not be considered by this Commission.

The Commission, in Application No. 246, authorized the sale of bonds for the purpose of creating the railroad between Sacramento and Vallejo at a minimum of 80 per cent of the face value thereof, and assuming that this property is to be transferred at cost, the delivery of \$1,000,000 of bonds therefor would in effect be a sale of the bonds at the minimum prescribed by the Commission in said application. However, applicant has offered in the event that these bonds are sold by it for a price in excess of 80 per cent of their face value to turn over to the Northern Electric Railway Company such excess.

I recommend that the application be granted, and submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California, by Vallejo and Northern Railroad Company, for an order authorizing it to sell, assign, and dispose of the whole of its

system, property, franchises and permits to Northern Electric Railway Company, and a hearing having been duly held and it appearing to the Commission that it is to the best interest of applicant and the Northern Electric Railway Company that such transfer be made, and that public convenience and necessity will be served thereby,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize applicant to sell, assign, and dispose of the whole of its railroad system, property, franchises and permits as more fully described and set out in an indenture made and entered into the twenty-first day of January, 1913, between Vallejo and Northern Railroad Company, a corporation, and Northern Electric Railway Company, a corporation, a copy of which indenture is attached to the application herein, reference to which is hereby made.

Said transfer shall be made upon the terms and conditions set out in an agreement made and entered into on the twenty-first day of January, 1913, between Vallejo and Northern Railroad Company, a corporation, and Northern Electric Railway Company, a corporation, a copy of which agreement is attached to the application herein, reference to which is hereby made. Said property to be transferred free of incumbrances, except that Northern Electric Railway Company is to assume all outstanding obligations of applicant for the payment of all amounts remaining due for said real property or rights of way upon which payment in part has been made by applicant, provided that as a condition precedent to the effectiveness of this order, applicant shall enter into an agreement, to be approved by this Commission, with said Northern Electric Railway Company, by which agreement it shall be provided that in the event that the bonds delivered to applicant in consideration of the transfer of the property herein mentioned shall be sold within a reasonable time for more than 80 per cent of their face value. The money above 80 per cent of the face value received on the sale of said bonds shall be immediately delivered to said Northern Electric Railway Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of February, 1913.

Decisions Nos. 465 and 466, grade crossings; not printed. See end of volume.

DECISION No. 467.

IN THE MATTER OF THE PETITION OF THE COALINGA WATER AND ELECTRIC CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF CERTAIN FRANCHISES HERETOFORE GRANTED TO IT BY THE COUNTIES OF MONTEREY, SAN LUIS OBISPO AND SANTA BARBARA.

Application No. 327.

*Decided February 19, 1913.*

Applicant secured franchises from the counties of Monterey, San Luis Obispo and Santa Barbara giving it permission to construct and operate an overhead electric transmission system upon and along the streets and highways of said counties, and asks for a certificate that public convenience and necessity require the exercise of such franchises and the construction of said pole system and the distribution of electrical energy. The design of applicant is to secure hydroelectric energy from the San Joaquin Light and Power Corporation, with which it is affiliated, and distribute it to consumers of its affiliated companies in Paso Robles and Santa Maria and to the rest of the territory covered by the application, the smaller steam plants to be abandoned and the larger to be held for auxiliary purposes.

*Held*, The carrying out of the enterprise as suggested will have the effect of substituting and supplying hydroelectric energy for steam heat energy and will, likewise, serve to bring a supply of electricity for domestic and industrial purposes to a considerable territory not now served, and, therefore, that the application should be granted.

*Sutherland & Barbour*, for Applicant.

*W. L. McKinley*, for Coast Counties Gas and Electric Company.

REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

The petitioner is a public utility corporation organized under the laws of the State of California and is now supplying electric power for domestic and industrial purposes in Coalinga, Fresno County, and in the oil fields adjacent thereto.

While there is no control by direct stock ownership of the applicant by the San Joaquin Light and Power Corporation, yet it is in evidence that the same individuals that control the San Joaquin Light and Power Corporation control the applicant through stock ownership.

Applicant has an authorized stock issue of \$500,000 six per cent cumulative preferred and \$1,500,000 common stock, of which there is issued \$500 of preferred stock and \$1,000,000 of common stock.

Applicant has an authorized bonded indebtedness of \$2,000,000, of which there has been issued \$593,000.

Applicant has secured franchises from the counties of Monterey, San Luis Obispo, and Santa Barbara, giving it permission to construct, equip, operate and maintain an electric power or pole and wire system for the purpose of conducting, transmitting, and distributing electricity and electric energy upon and along any of the public roads, streets and highways within each of said counties, and it asks for a certificate that public convenience and necessity require the exercise of such franchises and the construction of such pole lines and the distribution of electrical energy within the counties named.

Applicant controls through stock ownership, Midland Counties Gas and Electric Company, which serves San Luis Obispo and Arroyo Grande in San Luis Obispo County and Santa Maria in Santa Barbara County, and Paso Robles Light and Water Company, which serves Paso Robles in San Luis Obispo County. With the exception of these two companies, there is no utility distributing electrical energy within the territory which this company applies to serve, which embraces all of San Luis Obispo County, that portion of Monterey County south of an east and west line midway between King City and San Lucas, and that portion of Santa Barbara County lying north of Santa Ynez Mission. The two local companies, of which this company owns the stock, are now furnishing electricity for domestic and industrial purposes generated by steam. The design of the applicant is to secure hydroelectric energy from the San Joaquin Light and Power Corporation with which it is affiliated, as indicated above, and distribute it to the consumers of its affiliated companies in Paso Robles and Santa Maria, and to the rest of the territory covered by the application, the smaller steam plants to be abandoned and the larger to be held for auxiliary purposes.

No one appeared in opposition to the application, but the Coast Counties Gas and Electric Company, through its representative, desired to be assured that the granting of the application would not permit the distribution of electricity within any of the territory now served by it, and the applicant is willing that its territory should be so restricted.

The carrying out of the enterprise as suggested, will have the effect of substituting and supplying hydroelectric energy for steam heat energy and will likewise serve to bring a supply of electricity for domestic and industrial purposes to a considerable territory not now served and it is my opinion that the application should be granted. I, therefore, submit the following order:

**ORDER.**

Coalinga Water and Electric Corporation having applied to this Commission for a certificate that the public convenience and necessity require the exercise by it of rights granted under franchises granted by the boards of supervisors of the counties of Monterey, San Luis Obispo and Santa Barbara, empowering it to transmit and distribute electricity

within said counties, and a hearing having been duly held and being fully advised in the premises, the Commission hereby finds as a fact that public convenience and necessity will be served by the granting of the prayer of applicant to exercise the franchises aforesaid, and to serve all of that portion of Monterey County lying south of an east and west line midway between King City and San Lucas, all of San Luis Obispo County, and all of Santa Barbara County lying north of an east and west line through Santa Ynez Mission and west of an east and west line ten miles east of Santa Ynez Mission; and

*It is hereby ordered* that the applicant be permitted to exercise said franchises and to distribute electricity within the territory herein outlined.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of February, 1913.

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DECISION No. 468.

IN THE MATTER OF THE APPLICATION OF MIDWAY GAS COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AUTHORIZATION TO EXERCISE RIGHTS AND PRIVILEGES UNDER FRANCHISES HERETOFORE GRANTED TO IT IN THE COUNTIES OF KERN AND LOS ANGELES AND IN THE CITIES OF SAN FERNANDO AND BURBANK, UNDER SECTIONS 50a, b AND c OF THE PUBLIC UTILITIES ACT.

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Application No. 202.

*Decided February 20, 1913.*

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Applicant asks the Commission to issue a certificate that the present and future public convenience and necessity require the construction by it of a pipe line for the transmission of natural gas from certain natural gas fields in Kern County to a point within three miles of the city of Los Angeles, and for approval of the exercise of rights and privileges under certain franchises granted it by local authorities. It developed that the application concerned only a comparatively minor step in the proposed development, long distance transmission and distribution of natural gas in the city of Los Angeles and territory adjacent thereto. In determining the application, the project in its entirety was considered.

Four classes of parties are involved, to wit: (1) Honolulu Consolidated Oil Company, Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company and William G. Kerckhoff, the parties owning or claim-

ing title to the lands upon which the supply of natural gas has been located; (2) the applicant, Midway Gas Company, owner of transmission line and under contract to purchase specified quantities of natural gas at agreed prices from first parties with the object alone of transmitting such gas; (3) Southern California Gas Company, operating in the city of Los Angeles, and under contract to purchase the gas transmitted through the pipe system of second party, at agreed prices, with the dual object of distributing such gas wholesale to Los Angeles Gas and Electric Corporation, another company operating in Los Angeles, and to its own patrons; and (4) Los Angeles Gas and Electric Corporation under contract to purchase specified quantities of such gas from the third party at agreed prices, with the general object of distributing same for light, heat and power purposes to its patrons and its constituent companies.

The several contracts covering these respective arrangements summarized as to their essential terms and conditions and commented upon, the Commission being of the opinion that the purpose of the entire scheme is to limit output, restrict distribution and fix wholesale costs beyond the chance of any unwelcome public regulation. This scheme is sought to be consummated by (1) preventing others than the participants in these contracts from buying natural gas; (2) preventing others than the participants in these contracts from selling natural gas, either wholesale or retail; (3) limiting the territory within which the gas may be distributed; and (4) fixing a price in the contracts for gas at wholesale and providing that, in the event public authority shall successfully exert itself, the whole scheme shall fall. The result of the consummation of this scheme will be to bring about a monopoly which is not subject to restraint; a monopoly which will be in control of a cheap supply of natural gas and capable of destroying any competitors, except those that have found favor in its sight, by reason of its ability to undersell them, and it will have as the initial cost of this commodity a price which it is endeavored with the utmost care to exempt from public meddling, and a price which, if this scheme is legal at all, public authority, either State or municipal, must accept as the point from which to proceed in fixing rates.

**Held,** The wholesaler is just as much in need of regulation as the retailer and the law can and should look through the shadow to the substance and take cognizance of a scheme to defeat the best interests of the public under whatsoever guise such a scheme is found to exist.

**Held,** If, as here, it is sought not to benefit the public but to benefit the promoters and utility companies entirely under such terms as will prevent any adequate regulation by competent authority, public convenience and necessity does not require the granting of such an application, but that the carrying out of such a scheme would be directly contrary to the public interest.

Said contracts construed with relation to the effect of their performance upon the rights of the United States Government which are at issue in the courts in an action brought by the government to sustain its title to said natural gas bearing lands or any of them.

Application denied without prejudice to its renewal. To meet with the approval of the Commission, however, the matter must be presented freed from any attempt to remove it from reasonable regulation by competent public authority.

*S. M. Haskins*, for Applicant.

#### REPORT OF THE COMMISSION.

ESHLEMAN and EDGERTON, *Commissioners*.

The applicant is a corporation organized and existing under the laws of the State of California, and is empowered to produce, purchase, acquire, transmit, distribute and sell natural and artificial gas to be used for lighting, heating, fuel or for any other uses to which com-



bustible gas can be applied, and to supply such gas to municipalities in California and to their citizens and other persons or corporations. It is, therefore, a "gas corporation" and a "public utility" as defined in section 2 *p* and *bb* of the Public Utilities Act.

It applies for a certificate of public convenience and necessity under the provisions of the Public Utilities Act, and for the right to exercise franchises heretofore granted but not heretofore actually exercised. It is set up in the application that "before the twenty-third day of March, 1912, the said Midway Gas Company purchased from the boards of supervisors of the counties of Kern and Los Angeles, and from the boards of supervisors of San Fernando and Burbank franchises to maintain such pipe lines." It is likewise alleged that large amounts of money had been expended by the applicant in construction of its enterprise before the twenty-third day of March, 1912. The intent may be to bring the case under that portion of section 50*b* of the Public Utilities Act which provides that "when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege." That the applicant does not come under this provision, but is in the position of one who has secured franchises but has not actually been constructing thereunder prior to March 23, 1912, is plain from a reference to the ordinances granting such franchises.

The ordinance of the city of Burbank granting a right of way through that city was introduced on the sixteenth day of March, 1912, and passed on the twenty-third day of March, 1912. Evidently there could not have been any construction work undertaken under this ordinance prior to the twenty-third day of March, 1912, and any construction which had been done in the city of Burbank prior to such time was not under a franchise.

The ordinance passed by the board of supervisors of Kern County granting rights of way and franchises within said county was passed on the twelfth day of March, 1912, but in terms did not become effective until the first day of April, 1912. Therefore, any construction work done in the county of Kern prior to the first day of April, 1912, was not done under a franchise effective before the twenty-third day of March, 1912.

The ordinance of the city of San Fernando granting franchise to

pass through said city and operate therein, was not granted until the first day of April, 1912.

It appears that the only ordinance granting franchise which actually took effect before the twenty-third day of March, 1912, was the ordinance of the board of supervisors of Los Angeles County, which became effective on the twenty-first day of March.

Plainly, therefore, whatever construction had been made by this company anywhere upon its line, except in Los Angeles County, before the twenty-third day of March, 1912, was not made under a franchise, and as to the construction in the county of Los Angeles none except that which was done on the twenty-first and twenty-second of March could be said to have been done under a franchise.

After reciting the securing of franchises and the construction of a portion of its pipe line, the applicant asks that this Commission "issue its certificate that the present and future public convenience and necessity require the construction of said pipe line and the exercise of the rights granted by said franchises."

The plan of applicant is to construct a pipe line from the natural gas fields in Kern County to a point within three miles of the city of Los Angeles. The gas to be transmitted is to be purchased from other parties owning or claiming title to the land upon which the supply has been located, and is to be sold by applicant to another public utility. This other utility in turn proposes not alone to distribute and sell such gas to its present consumers in and adjacent to the city of Los Angeles, but to sell in wholesale quantities to a competitor company, which in turn will distribute and resell such gas to its customers and affiliated companies in and about Los Angeles. In brief the scheme is as follows:

John Martin made certain contracts with the Honolulu Consolidated Oil Company to purchase gas from this company, and has assigned these contracts to the applicant, the Midway Gas Company, which is constructing the pipe line. The Midway Gas Company has entered into a contract with the Southern California Gas Company to sell all of its gas at wholesale to said Southern California Gas Company. The Southern California Gas Company has likewise contracted for a supply of gas from the Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company and William G. Kerckhoff, thus acquiring the entire supply which is the subject of these contracts. The Southern California Gas Company has contracted with the Midway Gas Company for conveying all of the gas for which it has contracted through the pipe line of the Midway Gas Company to a point in Los Angeles County near the city of Los Angeles, and has guaranteed all of the bonded indebtedness of the Midway Gas Company, amounting to \$3,000,000, and has agreed to pay said company five cents per thousand

cubic feet for all gas carried through said pipe. The Southern California Gas Company has in turn contracted to deliver to the Los Angeles Gas and Electric Company gas at wholesale, and will both distribute the gas at wholesale to the Los Angeles Gas and Electric Corporation and distribute it to its own patrons. Thus we have roughly the parties involved thrown into four classes: first, owners or lessees of land from which the gas is drawn—Honolulu Consolidated Oil Company, Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company and William G. Kerekhoff; second, owner of pipe line—Midway Gas Company; third, wholesaler of gas—Southern California Gas Company; fourth, retailers of gas—Southern California Gas Company and Los Angeles Gas and Electric Company. It will here readily appear that the applicant occupies a very minor place in the entire scheme, and when the contracts are analyzed as I think briefly should be done, its position will be seen to be even less important.

The first contract which was entered into was that between John Martin and the Honolulu Consolidated Oil Company, wherein said Martin arranged for a supply ranging from fifteen million to twenty-five million cubic feet of gas daily for which he was to pay five cents per one thousand cubic feet. By a subsequent contract of November 17, 1911, between the same parties, the company agrees not to sell to any other party than Martin "anywhere in the State of California outside of the counties of Los Angeles, Orange, San Bernardino, Riverside, or San Diego" without giving Martin thirty days' option to take such gas on the terms equal to those offered by any other such party. The company further agrees that if during the life of the contract it shall market gas at any point in these counties it will market the same through Martin at a price which shall net to the selling company the same rates as it shall be entitled to receive for the gas sold under the contract of November 2d. These contracts between the Honolulu Consolidated Oil Company and Martin were on November 18, 1911, assigned to the Midway Gas Company.

The next contract in point of time was that between the Midway Gas Company and the Southern California Gas Company, wherein the Midway Gas Company leases to the Southern California Gas Company all of its pipe line, rights of way and appurtenances of every sort and constitutes the lessee its agent and representative to exercise and enforce all of the Midway Company's rights to the delivery of gas under the contracts of the Honolulu Consolidated Oil Company and John Martin, theretofore assigned to the Midway Gas Company. In this contract the Southern California Gas Company is substituted to the Midway Gas Company in its obligations to pay the Honolulu Consolidated Oil Company. Likewise, the Southern California Gas Com-

pany guarantees the payment of the \$3,000,000 issue of bonds outstanding and also the upkeep of the system, but the expense of such upkeep is to be taken out of rentals.

By a subsequent agreement of the next day, December 6, 1911, the Midway Gas Company agrees to set aside sufficient from its revenues before declaring dividends to pay the interest on its bonded debt and the bonds at maturity, and on the same day, by contract between the Southern California Gas Company and the Mercantile Trust Company, the Southern California Gas Company assumes the obligation to pay the interest and principal of the bonds of the Midway Gas Company.

By an agreement of March 1, 1912, between Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company, Southern California Gas Company, Midway Gas Company and William G. Kerckhoff, the Southern California Gas Company secures the right to a supply varying from 15,000,000 to 25,000,000 cubic feet of gas per day. It is set out in this agreement that the Southern Pacific Railroad Company, the Kern Trading and Oil Company and the Associated Oil Company would neither of them grant to the Southern California Gas Company the right to enter upon their lands, or upon the lands of either of them, for the development of gas thereon, and would not enter into this agreement with the gas company unless said Southern California Gas Company and Midway Gas Company would enter into this contract. The design of the contract seems to be to insure the payment of three cents per thousand cubic feet to the Southern Pacific Company, the Kern Trading and Oil Company, both for the gas acquired from their lands and gas acquired from adjoining lands, on the theory apparently that the gas would be drawn off from the lands of these companies if adjoining lands were tapped, and these lands were not. At any rate it is provided that in addition to the three cents per thousand cubic feet which is to be paid by the Southern California Gas Company to the Southern Pacific Railroad Company, the Kern Trading and Oil Company and the Associated Oil Company for gas produced and saved from their own lands, said Southern California Gas Company shall pay three cents per thousand cubic feet for all gas produced, saved, purchased or piped by the Southern California Gas Company and W. G. Kerckhoff from the lands of the Honolulu Consolidated Oil Company, or from the lands of any other owner in the Midway fields and the Buena Vista Hills, and also three cents per thousand cubic feet on all gas produced and saved from the lands of the Honolulu Consolidated Oil Company whether or not purchased by the Southern California Gas Company or the Midway Gas Company, except a small amount reserved to be sold in the Midway field. These payments were to begin at the time of the signing of the agreement, namely, March 1, 1912. The effect of this provision is to

give the Southern Pacific Railroad Company and these two large oil companies a payment of three cents per thousand cubic feet for all gas taken from this extensive field, regardless of the land from which it is taken.

It has further provided a guarantee by the Southern California Gas Company and Kerekhoff that the gas which is sold by the California Natural Gas Company for use in the Midway oil field, shall not be piped to any place outside such Midway oil fields, and if the Honolulu Consolidated Oil Company shall sell any gas to this local California Natural Gas Company for any other purpose than delivery within the Midway field, or if the Honolulu Consolidated Oil Company shall sell any gas to any other person or corporation, then the Southern California Gas Company shall also pay to the Southern Pacific Railroad Company and the two large oil companies, three cents per thousand cubic feet for all such gas sold.

So the active agency here, the Southern California Gas Company, not only pays this railroad and these two large oil companies three cents for gas wheresoever secured, but it undertakes to make parties not subject to the agreement perform a like service and in the event it cannot do so, it undertakes to pay three cents per thousand cubic feet to these large agencies.

It is further provided that the Southern California Gas Company shall not without the consent of the Southern Pacific Railroad Company and these two larger companies, parties to this agreement, extract from their lands more than two thirds of all the gas produced, purchased and piped for the gas company from said Midway oil field, the design being apparently to limit the amount to be obtained to two thirds the total requirements from these larger companies and one third from the Honolulu Consolidated Oil Company and other sources of supply. There is also a provision to the effect that any and all corporations or associations engaged in the business of selling gas in Southern California which may now, or hereafter during the life of this agreement, be owned or controlled by either the Midway Gas Company, the Southern California Gas Company or William G. Kerekhoff, or whose operations may be conducted directly or indirectly for any of said parties shall be bound by this agreement.

A second contract was also made on the first day of March, 1912, between the Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company and the Southern California Gas Company, which provides for the entering upon the lands of these first companies by the Southern California Gas Company for the purpose of developing gas wells. It is provided, however, that aside from the provisions for securing a supply of gas and the price to be paid therefor the main point of interest in this contract is the additional

attempt to limit the operation of the Southern California Gas Company and the output of gas. It is provided that the contract is not assignable and that on the bankruptcy of the Southern California Gas Company the contract is terminable by the railroad and oil companies. It is further provided that the Southern California Gas Company shall give the Southern Pacific Railroad and its affiliated companies preference in the transportation of any traffic which the gas company or its affiliated companies may be able to control. The same provision as occurs in the other contract of this same date is found, namely, that the Southern California Gas Company shall cause everyone whom it may control, directly or indirectly, to abide by the terms of this contract.

The last contract of this series is by far the most important for the purposes of this decision, but an extensive review is not necessary. It was entered into on the twenty-sixth day of October, 1912, between the Southern California Gas Company, the Los Angeles Gas and Electric Corporation, and the Midway Gas Company—which, however, is only a nominal party—and deals with the sale and distribution of the natural gas to be acquired by the Southern California Gas Company through the contracts heretofore outlined. It is provided that the Southern California Gas Company shall not transmit and deliver gas to any one in Los Angeles County before April 1, 1913, unless the Los Angeles Gas and Electric Corporation before that time shall have exercised its option to take the full amount of gas it is then entitled to, except, however, that the Southern California Gas Company may supply gas to public utility companies for operating artificial gas or electric generating plants or compressors, and to the Southern California Edison Company and its affiliated companies for resale to consumers in Venice and other communities in that vicinity, and to Western Fuel, Gas and Power Company for resale to its consumers in Redondo and vicinity, and to Southern Counties Gas Company for resale to its consumers and to the consumers of the Southern California Gas Company itself in Compton, Beverly, Tropico, Glendale, San Fernando, and Torrence. In this provision definite boundaries are mapped out within which the various companies may distribute natural gas, and it is not surprising that in view of this fact the following proviso is inserted:

“Nothing in this article is intended to be in contravention or against the policy of the law, but should any provision thereof be judicially determined to be in contravention or against such policy, such determination shall not invalidate or affect any other provisions of this contract.”

At least the parties to this contract had some doubt as to what public authority would do with reference to this limiting provision. It is further provided that if the Southern California Gas Company shall not have made the connection from its leased pipe line with the system of

the Los Angeles Gas and Electric Corporation prior to April 1, 1913, that no obligation shall rest upon either of the parties to the contract to take or deliver natural gas prior to such date unless the Southern California Gas Company "willingly" is delivering gas to "any customer or consumer for use or resale in any portion of Los Angeles County, except in the cities of San Fernando, Burbank, Glendale and Tropic and their immediate vicinity outside the city of Los Angeles, as it now exists, and west to the most westerly boundary line of the city of Eagle Rock and the prolongation of such boundary line to the north and the south," in which event the Southern California Gas Company shall be required immediately to deliver gas to the Los Angeles Gas and Electric Corporation. Here, again, an attempt is made to limit territory and the plain inference thrown out that exclusive territory within the county of Los Angeles is "owned" by these two companies, parties to this contract. And, again, in article 12 of the contract we find this language:

"This agreement on the part of second party (Los Angeles Gas and Electric Corporation) to take any such gas is for the purpose of enabling first party (Southern California Gas Company) to dispose of its gas, and second party shall be under obligations to receive and pay for the gas which, as heretofore provided, shall be supplied to it only so long as first party is not supplying gas to customers or consumers in territory now supplied by second party with artificial gas or any territory which may hereafter be supplied by second party with artificial gas or artificial gas mixed with gas and in which last mentioned territory first party was not itself directly or indirectly supplying gas or artificial gas prior to the second party."

And again in the same article we find the following provision:

"If by reason of any lawful act or action on the part of any legally constituted authority the prices to be paid first party by second party are at any time substantially lowered or the obligations, or any thereof of the first party under this contract are substantially increased or rendered substantially more onerous, then first party shall have the right at its option upon giving thirty days' notice to second party, to suspend this contract and cease the development and bringing of gas to the county of Los Angeles."

And further:

"If without application or procurement by first or third party (Midway Gas Company) any legally constituted authority shall lawfully increase the price to be paid first party by second party for any of the classes of gas, as classified in article 13, and such gas cannot be delivered to second party by first party at the prices provided in this contract, then first party shall give second party notice of such increase, and within ten days after receipt of such

notice second party shall have the right at its option to take or refuse to take a class of gas as to which the price will be so increased."

The fear of competition with natural gas secured elsewhere is shown by the restriction in article 13 of the contract, which provides that if natural gas is discovered elsewhere and actually introduced into the city of Los Angeles and adjacent communities by other agencies and competition is brought about, and such competition reduces the earnings of the Los Angeles Gas and Electric Corporation to six per cent net upon the total value of its works and system, the Los Angeles Gas and Electric Corporation shall have the right to cancel the contract or procure any portion of its requirements of natural or artificial gas elsewhere.

The last provision of this contract to which it is necessary to refer is one wherein it is provided that should the government of the United States, or any adverse claimants to the lands of the Southern Pacific Railroad Company, the Kern Trading and Oil Company, and the Associated Oil Company, secure title to said lands from the said railroad company and oil companies, then the three cents per thousand cubic feet, which it is provided shall be paid by the Southern California Gas Company to this railroad company and these oil companies, shall be reduced in proportion to the amount of land which is taken from these companies by said adverse claimants.

It is our construction of the contract that, if the government of the United States should acquire in its suits against these companies one half their lands, for example, then the Southern California Gas Company shall only be obliged to pay half as much to these companies for the gas which it secures from the Midway fields. The intent and effect of this provision, read in connection with the contract of March 1, 1912, between the Southern Pacific Railroad Company, Kern Trading and Oil Company, Associated Oil Company, Southern California Gas Company, Midway Gas Company and William G. Kerekhoff, seems to be that this railroad company and these large oil companies may collect this three cents per thousand cubic feet, pending the determination of their title to their lands, and, thereafter, must reduce the amount collected as herein provided, but no provision is made for them to return the money, collected in the meantime, to the United States, or any other real owner of the lands. Apparently if the government happens to sustain its title to the lands, or any of them, the taking of gas by these gas companies from lands adjoining such government land either does not drain gas from under such lands or the contracting parties are willing to have it understood that even if such is the case they are willing to take gas from the government without paying therefor. In effect we have an arrangement whereby during the pendency of



these suits the Southern Pacific Railroad Company and these oil companies are paid for a commodity which if it be subject to sale at all is only subject to sale by the government of the United States, if in fact the title is in the government. It may be urged that the United States is able to look after its own interest in this regard. However this may be, we do not look with favor upon an arrangement whereby these companies drain off from land, which may be public land of the United States, a valuable commodity, sell the same, pocket the proceeds, and make no provision for voluntarily returning such proceeds to the rightful owner of the land if it be determined these contracting parties are not such rightful owners.

These contracts are very voluminous. The last one that we have just been considering consists of seventy-five typewritten pages. But we have considered it necessary to give them a careful study and also to present this outline, so that the basis for our conclusions may be apparent. The entire scheme is to limit output, restrict distribution and fix wholesale costs beyond the chance of any unwelcome public regulation. This scheme is sought to be consummated by—

*First*—Preventing others than the participants in these contracts from buying natural gas;

*Second*—Preventing others than the participants in these contracts from selling natural gas, either wholesale or retail;

*Third*—Limiting the territory within which the gas may be distributed; and

*Fourth*—Fixing a price in the contracts for gas at wholesale and providing that in the event public authority shall successfully exert itself, the whole scheme shall fall.

The result of the consummation of this scheme will be that we will have an agency, namely, the Southern California Gas Company, which will be in control of a supply of natural gas, with the price immutably fixed and with its consumers limited to favored persons—alleged competitors—but not so in reality, and to its own consumers. Thus, we will bring about a monopoly which is not subject to restraint; a monopoly which will be in control of a cheap supply of natural gas and capable of destroying any competitors, except those that have found favor in its sight, by reason of its ability to undersell them, and it will have, as the initial cost of this commodity, a price which it is endeavored with the utmost care to exempt from public meddling, and a price which, if this scheme is legal at all, public authority, either state or municipal, must accept as the point from which to proceed in fixing rates.

The price may or may not be proper, but it is the wise policy of the law, as an outgrowth of the necessities of consumers that the substance shall be regulated and not the shadow. If this scheme can be carried

through in this instance, it can be carried through in others, and while there may not be a relationship in this instance, between the buyer and seller of this commodity which admits of collusion in fixing the price, still the possibility exists, and, for all we know, the price could have as easily been placed by the parties to these contracts at double the figures herein provided as at such figure. The wholesaler is just as much in need of regulation as the retailer and we believe the law can, and should, look through the shadow to the substance and take cognizance of a scheme to defeat the best interests of the public under whatsoever guise such a scheme is found to exist.

The last, and most important contract, between the Southern California Gas Company, the Los Angeles Gas and Electric Corporation and the Midway Gas Company, the applicant herein, was entered into after the Public Utilities Act became effective, and, therefore, in our opinion, to have any effect at all, must be approved by this Commission.

We do not believe it is necessary to review these contracts or this application further to have it appear that public convenience and necessity will not be served by granting the application. The applicant says "that the enterprise undertaken by your petitioner will result in the establishment of a new industry and the beneficial use of a natural product of the State that is now practically undeveloped." This sounds very well, and we agree thoroughly with the applicant, that under proper conditions the use of a natural product which may be produced cheaply and the substitution thereof for another commodity, which is a result of manufacture, is usually a good thing for the public and that public convenience and necessity may be served by such an undertaking, but it must be readily admitted that this is entirely dependent upon the terms upon which the natural commodity is presented to the public. If, as here, it is sought not to benefit the public, but to benefit the promoters and utility companies entirely under such terms as will prevent any adequate regulation by competent authority, we have no hesitancy in saying that the public convenience and necessity does not require the granting of such an application, but that the carrying out of such a scheme would be directly contrary to the public interest.

We do not want to be understood as saying that we do not think liberal profits should be made by men of ideas who assume the risk of the development of an enterprise such as this one, and whose breadth of vision permits the conception thereof, and we do not complain even about the very liberal compensation which apparently Mr. Martin and his associates would make out of this idea and this enterprise, but we are strongly of the opinion that for the Commission directly or indirectly to approve a scheme which relieves a public utility of very necessary regulation would make us parties to whatsoever unreasonable exactions or unreasonable practices would be resorted to by this enter-

prise, and would likewise be a recognition that such a plan may be carried out under even worse circumstances. / We believe that this scheme can be presented on such terms as will meet the approval of this Commission, but we find specifically as a fact after careful consideration, that to grant the application on the terms made would not serve public convenience and necessity, but we find as a fact to permit this applicant, and indirectly the other participants in the enterprise, to exercise franchises and to complete this pipe line would be directly subservient of public convenience and necessity. / Believing, as we do, that this plan may be worked out in such a way that while being fair to the promoters and producers of the natural gas it will likewise be fair to the public, and believing likewise that the enterprise in itself if freed from the objections which we have here set out may greatly benefit the public, we suggest that the applicant again submit the matter to the Commission formally or informally with a view to working out the plan as we believe it should be. / As we have said, we do not desire in any way to prevent the promoters of this enterprise from profiting by it, nor do we object to reasonable restrictions which may be found necessary on account of the nature of the enterprise and the commodity served, and although we cannot approve the application under the conditions which are now before us we wish it plainly understood that we desire to assist the promoters in carrying out this enterprise along proper lines and not to impede them. To meet with the approval of this Commission, however, the matter must be presented freed from any attempt to remove it from reasonable regulation by competent public authority.

We, therefore, submit the following order:

#### ORDER.

Midway Gas Company having applied to this Commission for a certificate that the present and future public convenience and necessity require the construction by it of a pipe line from the Midway oil fields in Kern County to a point near the city of Los Angeles, in the county of Los Angeles, and the exercise by said applicant of franchise rights heretofore granted but not actually exercised, and a hearing having been held, and being fully advised in the premises, the Commission hereby finds as a fact that public convenience and necessity would not be served by the granting of said application under the present conditions, brought about by the various contracts reviewed herein, and

*It is hereby ordered* that the said application be, and the same is, hereby denied without prejudice to its renewal.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of February, 1913.

## DECISION No. 469.

IN THE MATTER OF THE APPLICATION OF THE COLUSA AND HAMILTON RAILROAD COMPANY FOR PERMISSION TO CROSS AT GRADE THE TRACK OF COLUSA AND LAKE RAILROAD COMPANY IN THE TOWN OF COLUSA, COLUSA COUNTY, CALIFORNIA.

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Application No. 317.

*Decided February 20, 1913.*

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*Frank Freeman*, for Colusa and Hamilton Railroad Company.

*E. Burrows*, for Colusa and Lake Railroad Company.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Colusa and Hamilton Railroad Company, a corporation, having on December 6, 1912, filed with the Commission an application for permission to construct its main line track at grade across the track of Colusa and Lake Railroad Company in the town of Colusa, Colusa County, California, and a hearing having been held by the Commission at the town of Colusa, Colusa County, California, on February 15, 1913, at which the interested parties were duly represented, and testimony having been taken concerning the matters contained in the application; and it appearing to the Commission that it is not reasonable nor practicable to avoid a grade crossing of the track of applicant with the track of Colusa and Lake Railroad Company, and that the application should be granted subject to the conditions hereinafter specified,

*It is hereby ordered* that permission be hereby granted Colusa and Hamilton Railroad Company to cross at grade with its main line track the track of Colusa and Lake Railroad Company in the town of Colusa, Colusa County, California, as prayed for in the application and as shown by the maps and profiles attached thereto, subject to the following conditions, to wit:

1. The applicant shall at its own expense provide suitable crossing frogs and timbers for the construction of said crossing and shall hereafter maintain same at its own cost in good and first-class condition for the safe operation of trains and cars thereover.

2. For the protection of said crossing, applicant shall hereafter, upon order of this Commission, at its own expense, install and place in operation, under the authority and approval of this Commission, a first-class interlocking device of such plan and design as this Commission shall approve. Said device shall thereafter be operated and

maintained in accordance with such rules and regulations as this Commission may issue governing in such matters.

3. The expense of maintaining and operating said interlocking device after its installation shall be divided equally between applicant and Colusa and Lake Railroad Company.

4. After the installation of the crossing frogs above provided for and up to the time the interlocking device hereinbefore specified has been completed and placed in operation under the authority of this Commission, all locomotives, trains and cars of either applicant or Colusa and Lake Railroad Company shall, before proceeding over the crossing, come to a full stop within fifty (50) feet thereof and shall not proceed over same until it has been ascertained that it is safe to do so and after proper signals have been given.

5. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this the 20th day of February, 1913.

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DECISION No. 470.

IN THE MATTER OF THE APPLICATION OF COLUSA AND HAMILTON RAILROAD COMPANY FOR PERMISSION TO CROSS THE TRACK OF NORTHERN ELECTRIC RAILWAY COMPANY NEAR THE TOWN OF HAMILTON, GLENN COUNTY, CALIFORNIA.

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Application No. 318.

*Decided February 20, 1913.*

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*Frank Freeman*, for Colusa and Hamilton Railroad Company.  
*A. D. Schindler*, for Northern Electric Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Colusa and Hamilton Railroad Company, a corporation, having on December 6, 1912, filed with the Commission an application for permission to construct its main line track at grade across the track of Northern Electric Railway Company near the town of Hamilton, Glenn County, California, and a hearing having been held by the Commission

at Colusa, Colusa County, California, on February 15, 1913, at which the parties were duly represented, and testimony having been taken concerning the matters contained in the application, and it appearing to the Commission that it is not reasonable nor practicable to avoid grade crossing of the track of Colusa and Hamilton Railroad Company with the track of Northern Electric Railway Company, and that the application should be granted subject to the conditions hereinafter specified,

*It is hereby ordered* that permission be hereby granted Colusa and Hamilton Railroad Company to cross at grade with its main line track the track of Northern Electric Railway Company near Hamilton, Glenn County, California, as prayed for in said application and as shown by the maps and profiles attached thereto, subject to the following conditions, to wit:

1. The applicant shall at its own expense construct and hereafter maintain the crossing, and shall provide the necessary frogs and timbers for said crossing and maintain same hereafter in good and first-class condition for the safe passage thereof of all trains.

2. For the protection of said crossing applicant shall hereafter, upon order of this Commission, install and place in operation, under the authority and approval of this Commission, at its own expense, a first-class standard interlocking device of such plan and design as this Commission shall approve. Said device shall thereafter be maintained and operated in accordance with such rules and regulations as this Commission may issue governing in such matters.

3. The expense of maintaining and operating the said interlocking device shall, after its installation, be equally divided between applicant and Northern Electric Railway Company.

4. After the installation of the frogs for said crossing and up to the time the interlocking device above provided for has been completed and placed in operation under the authority of this Commission, all locomotives, trains and cars of either applicant or Northern Electric Railway Company shall, before proceeding over the crossing, come to a full stop within fifty (50) feet thereof, and shall not proceed over same until it has been ascertained that it is safe to do so and after proper signals have been given.

5. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper and to revoke its permission, if, in its judgment, the public convenience and necessity demand such action.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this the 20th day of February, 1913.

Decisions Nos. 471 and 472, grade crossings; not printed. See end of volume.

DECISION No. 473.

MAMMOTH COPPER MINING COMPANY OF MAINE

vs.

SOUTHERN PACIFIC COMPANY.

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Case No. 300.

*Decided February 20, 1913.*

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Upon application for a rehearing, an order having been entered December 20, 1912, fixing the rate of \$6.90 per ton of 2,000 pounds on shipments of blister copper upon its actual value, which, upon the evidence, was found not to exceed \$400 per ton, application granted, it having been stipulated that in case the rehearing be granted the evidence presented in this proceeding be considered to be the evidence which would have been presented on such rehearing and that the matter be determined on such evidence and the evidence on the original hearing.

*Held*, In view of the uncontradicted evidence now introduced that the value of blister copper is at times as low as \$335 per ton, the Commission's order should be modified to provide the rate of \$4.90 per ton of 2,000 pounds on blister copper, actual value not to exceed \$300 per ton of 2,000 pounds, carloads, minimum weight 30 pounds, with an additional 2 per cent of the value on any value above \$300 per ton of 2,000 pounds, from Kennett to Oakland Long Wharf and San Francisco.

*Alfred Sutro*, for Complainant.

*C. W. Durbrow*, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

On December 20, 1912, this Commission made its order in the proceeding entitled as above, directing the defendant to file and publish a rate of six dollars and ninety cents (\$6.90) per ton of 2,000 pounds on blister copper in anodes, pigs or bars, actual value not to exceed \$400 per ton of 2,000 pounds, carloads, minimum weight 30,000 pounds, from Kennett to Oakland Long Wharf and San Francisco. The complainant thereafter filed an application for a rehearing. The present proceeding consisted of evidence and argument on the question whether a rehearing should be granted. Both parties stipulated at the hearing that if the rehearing were granted the evidence presented in this proceeding should be considered to be the evidence which would have been presented on the rehearing, if granted, and that the matter might be disposed of on this evidence and the evidence presented at the original hearing. This stipulation was entered into to avoid the necessity of a second hearing, in case a rehearing was granted.

The two contentions relied on by complainant in its application for a rehearing are:

1. That it produces at its smelter at Kennett, California, blister copper having a value of less than \$400 per ton, being the value referred to in this Commission's order of December 20, 1912.

2. That the rate of six dollars and ninety cents (\$6.90) per ton, found by the Commission to be reasonable, is excessive as being predicted on an excessive and unreasonable rule of the defendant.

The evidence at the original hearing showed that the value of the blister copper produced by complainant at Kennett is about \$400 per ton of 2,000 pounds. In this proceeding, complainant contends that it produces blister copper which at times is worth considerable less than this amount, and hence asks for a lower rate for such blister copper. The evidence on this point shows that the blister copper as shipped from complainant's smelter at Kennett consists of about 98 per cent of copper and 2 per cent of other metals, principally gold and silver; that the prices of copper in New York has varied during the last few years from about 11½ cents to 17 cents per pound and that at the date of the hearing it was 16½ cents per pound; that the amount of gold per ton varies from ¾ to 3½ ounces and of silver from 50 to 350 ounces, and that the value of gold varies from \$15 to \$70 and of the silver from \$40 to \$210 per ton of blister copper; that the cost of freight and refining is about 2 cents per pound of blister copper; and that the value of the blister copper varies from about \$335 to about \$480 per ton, depending upon the varying quantities of precious metals therein and the varying prices thereof. In view of the contradicted evidence now introduced that the value of blister copper is at times as low as \$335 per ton, the Commission's order should be modified as hereinafter in the order specified.

In seeking to ascertain a just and reasonable rate, this Commission, in its original order, considered, among other facts, a rate of \$3.50 per ton of 2,000 pounds voluntarily established by defendant on copper matte, carloads, "actual value not to exceed \$150 per ton," from San Francisco to Kennett, and considered in connection therewith Rule 7 of defendant's Local, Joint and Proportional Freight Tariff No. 635-A, C. R. C. No. 1290, establishing the rule for ascertaining the rate on ore, concentrates, sulphurets, metal, bullion and matte of a value in excess of \$100 per ton of 2,000 pounds, by taking certain increasing percentages of the rate or value, as the case may be, as the value per ton increases. Complainant contends that this rule is unjust and unreasonable, and draws attention to a practice largely adopted by carriers elsewhere, of establishing a rate on a released valuation, and an alternative rate amounting to from 110 per cent to 120 per cent of the first rate in case the value is not released, entirely irrespective



of varying values of the commodity. There is no evidence that the circumstances under which this rule is applied elsewhere are such as to make it a fair rule to apply to shipments in this State in lieu of the defendant's rule to which reference has heretofore been made, and I shall not apply the proposed rule in this case.

I find as a fact that the rate hereinafter in the order specified to be established by defendant is a just and reasonable rate and recommend that defendant be directed to file and publish the same. This Commission's opinion and order in the above entitled proceeding, dated December 20, 1912, in so far as applicable, are hereby made a part of this opinion and order.

I submit herewith the following form of order:

**ORDER.**

The Mammoth Copper Mining Company of Maine having filed with this Commission its petition for a rehearing in the proceedings entitled as above, and argument having been duly made and evidence presented on the question whether a rehearing should be granted, and the parties having stipulated that in case a rehearing be granted the evidence presented in this proceeding be considered to be the evidence which would have been presented on such rehearing and that the matter be determined on such evidence and the evidence on the original hearing, and the matter having been submitted,

*It is hereby ordered* that such application for rehearing be and the same is hereby granted.

And the Commission finding as a fact that the present rate of \$11 per ton of 2,000 pounds on blister copper, actual value not to exceed \$300 per ton of 2,000 pounds, in carload lots, from Kennett to Oakland Long Wharf and San Francisco is an unjust and unreasonable rate and that the rate of \$4.90 per ton of 2,000 pounds on blister copper, in anodes, pigs or bars, actual value not to exceed \$300 per ton of 2,000 pounds, carloads, minimum weight 30,000 pounds, with an additional 2 per cent of the value on any value above \$300 per ton of 2,000 pounds, from Kennett to Oakland Long Wharf and San Francisco would be a just and reasonable rate and that the defendant should publish the same,

*It is hereby ordered* that within twenty days from the service on defendant of this order, defendant shall file and publish, effective at the expiration of said period of twenty days, a rate of four dollars and ninety cents (\$4.90) per ton of 2,000 pounds on blister copper in anodes, pigs or bars, actual value not to exceed \$300 per ton of 2,000 pounds, carloads, minimum weight 30,000 pounds, with an additional 2 per cent of the value on any value above \$300 per ton of 2,000 pounds, from Kennett to Oakland Long Wharf and San Francisco, said rate to apply

on State movements alone and not to include any service of defendant in loading said copper on any vessel at said Oakland Long Wharf or San Francisco, or in arranging said copper in said vessel for safe transportation or otherwise.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of February, 1913.

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Decision No. 474, grade crossing; not printed. See end of volume.

DECISION No. 475.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY FOR AN ORDER AUTHORIZING IT TO EXECUTE A MORTGAGE AND DEED OF TRUST TO MERCANTILE TRUST COMPANY OF SAN FRANCISCO; AND TO SELL OR PLEDGE AS SECURITY THREE HUNDRED THOUSAND DOLLARS OF BONDS.

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Application No. 368.

*Decided February 20, 1913.*

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The Tulare County Power Company made application for permission to execute a mortgage to secure an issue of \$500,000 six per cent bonds, to sell \$300,000 of said bonds at 80, and to devote the proceeds to the discharge of obligations and to new construction. The Mount Whitney Power and Electric Company intervened in opposition on the ground that the \$36 per horsepower rate of applicant could not but result in a deficit with disastrous consequences. The Commission found that said rate is intended to provide service at cost and that the contract for such rate contains a provision for the payment of an additional sum, if necessary, to cover the cost of the service. Also, that applicant, who has been operating less than one year and may be regarded as in the initial period of business development, was able to show ownership of physical properties of the value in excess of the proposed \$300,000 bond issue, and that its profit and loss statement indicates that applicant is more than making ordinary operating expenses and shows a steady increase in gross earnings.

*Held*, Application granted, the bonds, if used as collateral, to be pledged for not less than 75 per cent of their face value and, if sold, the selling price to be not less than 80 per cent; and upon the further condition, among others, that applicant shall, within specified time, raise, from the holders of its stock, in a manner to be approved by the Commission, the sum of \$15,000, and shall invest said sum in additions or betterments to its plant or system.

*A. M. Drew and Goodfellow, Eels & Orrick*, for Tulare County Power Company.

*Jesse W. Lilienthal*, for Mount Whitney Power and Electric Company.

*Robert McGahie*, for F. W. Coreoran, a stockholder in Tulare County Power Company.

## REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an application by Tulare County Power Company to execute a mortgage and deed of trust to Mercantile Trust Company of San Francisco to secure an authorized issue of \$500,000 of bonds; and to issue or pledge as collateral security \$300,000 of said bonds. Tulare County Power Company asks also that the Commission vacate its order of September 25, 1912, authorizing said corporation to mortgage its property to Thomas C. Job.

Tulare County Power Company is engaged in the business of furnishing light and power in the county of Tulare. It began operations on April 17, 1912, and on July 11th last year was given authority under an order of this Commission to distribute and sell electricity under franchises in Tulare County and in the cities of Tulare, Lindsay, and Exeter, of said county.

Thereafter, upon application of said corporation, this Commission issued an order on September 25th empowering Tulare County Power Company to mortgage its property to Thomas C. Job in the amount of \$175,000. The order upon this matter contained a description of applicant's plant, operations, territory and general financial condition. It is not necessary, therefore, to go into these details again for the purposes of the matters now under consideration. The negotiations with Thomas C. Job failed of consummation and the applicant now desires to enter into new arrangements to obtain money for future financing.

The applicant has been operating less than one year and may be regarded as in the initial period of business development. It was able to show ownership of physical properties of a value in excess of the proposed issue of bonds of \$300,000. The profit and loss statement indicates that applicant is more than making ordinary operating expenses and shows a steady increase in gross earnings.

Due allowance must be made for a corporation in its first year of operation. It cannot be expected to show its full earning strength and a substantial increase of gross receipts month by month cannot but be regarded as a hopeful indication of future stability. Tulare County Power Company operates in a rich agricultural section and is drawing a large part of its revenues from pump irrigation business. There is a large field for the development of this business and the applicant herein proposes with a portion of the proceeds from the sale of its bonds to extend its transmission lines so as to reap the full benefits of the business now offered.

It is the purpose of Tulare County Power Company to execute its mortgage and deed of trust, dated January 2, 1913, to Mercantile Trust Company to secure an issue of \$500,000 of 6 per cent sinking fund bonds of the par value of \$500 each and to sell or hypothecate \$300,000

of said bonds. It is proposed to devote the proceeds from the sale of these bonds to the following purposes:

|   |              |
|---|--------------|
| To discharge notes payable, as listed in the application on file with this Commission in the sum of-----    | \$156,681 61 |
| To discharge accounts payable, as listed in the application on file with this Commission in the sum of----- | 48,733 17    |
| To pay "vouchers and pay checks payable," as listed in the application on file with this Commission-----    | 8,916 02     |
| To build transmission lines to connect with new business as offered -----                                   | 60,000 00    |
| Total -----   | \$274,330 80 |

Nearly all of this indebtedness has been incurred in the purchase and installation of electrical equipment and machinery.

An engineer and an accountant from the Commission have made an inventory of applicant's property and have made an inspection of its accounts. Upon the basis of their report, I find that there are properly chargeable to capital account all of the notes payable, with the exception of notes in the sum of \$3,500 representing commissions on stock, leaving an amount to be paid from the proceeds of bonds of \$153,181.61; I find also from the report rendered by the accountant of the Commission that, properly chargeable to capital account, are accounts payable in the sum of \$40,209.67; and "vouchers and pay checks payable" in the sum of \$6,208.66; I find also that the transmission lines are needed and should be paid from the sale of the bonds in the sum of \$60,000. Total, \$259,599.94.

Applicant at first believed that it could sell its bonds at 90, but has since made representations to the Commission that it cannot well sell its bonds at a price above 80. This price for the 6 per cent bonds would tend to cast a heavy interest burden upon the company. I believe that 85 should be the minimum price for the sale of these bonds and while I shall recommend that the applicant be given authority to sell these bonds at a minimum of 80, I shall join with it another recommendation that the balance to make up 85 be supplied by the stockholders.

At the hearing upon this application, Mount Whitney Power and Electric Company intervened in opposition. Mr. Robert McGahie, representing Mr. F. W. Corcoran, stockholder in the Tulare County Power Company, also intervened in opposition. It was contended by Mr. Jesse W. Lilienthal, representing Mount Whitney Power and Electric Company, that the financial fabric and future prospects of Tulare County Power Company did not warrant an issue of bonds in the sum of \$300,000 as applied for. He argued that Tulare County Power Company was endeavoring to proceed upon a power rate of \$36 per horsepower per year to the holders of its consumers' stock, while, as he claimed, the Commission had found in a previous hearing that \$50 per horsepower was a reasonable rate. The reference was to the Opinion and Order of this Commission in Applications Nos. 81 and 104 and Case No. 268 in which San Joaquin Light and Power Corpora-

tion, Tulare County Power Company and Mount Whitney Power and Electric Company were in controversy over territory to be served. In these cases the Commission was not engaged in establishing rates and I do not find anything therein that could be construed as a positive declaration by the Commission as to the reasonableness of the \$50 rate.

It was argued further, on behalf of Mount Whitney Power and Electric Company, that the \$36 per horsepower rate of Tulare County Power Company could not but result in a deficit with disastrous consequences. I find, however, that the \$36 rate of Tulare County Power Company is intended to provide service at cost and that the contract for this \$36 rate contains a provision for the payment of an additional sum, if necessary, to cover the cost of the service.

The objections of Mr. McGahie covered the general financial standing of Tulare County Power Company. At the hearing a question was raised as to certain features of the hydroelectric project which Tulare County Power Company has under consideration. This objection, however, need not be considered in this case, as no part of the proceeds from the bonds applied for is to be devoted to the hydroelectric project.

I find after a careful review of the facts and the arguments for and against the application that it should be granted and I submit herewith the following form of order :

**ORDER.**

Tulare County Power Company having applied to this Commission for an order authorizing the execution by said corporation of a certain mortgage and deed of trust, dated January 2, 1913, to Mercantile Trust Company of San Francisco, covering all its property to secure an issue of \$500,000 face value 6 per cent sinking fund bonds of the par value of \$500 each, maturing January 2, 1953; and for authority to sell or hypothecate \$300,000 face value of said bonds; and for a further order of this Commission vacating the opinion and order of this Commission, dated September 25, 1912, authorizing said Tulare County Power Company to mortgage its property to Thomas C. Job; and a hearing having been duly held upon said application; and the Commission finding that the facts presented warrant the execution of said mortgage and deed of trust to Mercantile Trust Company and the cancellation of the previous order of this Commission empowering said Tulare County Power Company to mortgage its plant to Thomas C. Job; and that the bonds in the sum of \$300,000 now proposed to be issued are for purposes not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* by the Railroad Commission of the State of California, that Tulare County Power Company be authorized, and it is hereby authorized, to execute a mortgage and deed of trust, dated January 2, 1913, to Mercantile Trust Company of San Francisco, a

copy of which is annexed to the application and marked "Exhibit D," covering all its property to secure an issue of \$500,000 face value 6 per cent sinking fund bonds of the par value of \$500 each, maturing January 2, 1953, and that a certified copy of the same, when executed, shall be filed with this Commission.

*It is hereby ordered* that the Railroad Commission of the State of California authorize, and it does hereby authorize, said Tulare County Power Company to sell, or pledge as collateral security for a loan, \$300,000 face value of principal of said bonds on the terms and conditions hereinafter specified.

*It is further ordered* that the Railroad Commission of the State of California does hereby vacate and nullify its previous order of September 25, 1912, in which Tulare County Power Company was empowered to mortgage its property to Thomas C. Job.

The bonds hereby authorized to be sold or pledged as security in the sum of \$300,000 shall be pledged or sold upon the following conditions and not otherwise:

I. Said bonds shall be pledged for not less than 75 per cent of their face value and only after this Commission has approved the note for the payment of which they may be given as security.

II. Tulare County Power Company shall sell said bonds to net said company not less than 80 per cent of the face value of the principal thereof and accrued interest thereon.

III. Tulare County Power Company shall, by March 1, 1914, raise from the holders of its stock in a manner to be approved by this Commission, the sum of \$15,000 and shall invest said sum in additions or betterments to its plant or system.

IV. The proceeds from the sale of said bonds shall be applied solely to the following purposes:

|  |              |
|--|--------------|
| The discharge of notes payable, as filed by applicant with this Commission, with the exception of four notes given in payment of commissions for the sale of stock in the sum of \$3,500, or a total of----- | \$153,181 61 |
| For the discharge of accounts payable, as filed with this Commission -----   | 40,209 67    |
| For the discharge of "vouchers and pay checks payable" as filed with this Commission -----   | 6,208 66     |
| For transmission lines -----   | 60,000 00    |
| Total -----  | \$259,599 94 |

V. Said bonds shall not be sold until Tulare County Power Company shall have filed with this Commission a statement showing that no mortgage has been executed of any of its properties to Thomas C. Job.

VI. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make verified

reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

VII. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the thirty-first day of December, 1913. This order will become effective on payment of fee as prescribed by section 57 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of February, 1913.

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DECISION No. 476.

TEHAMA COUNTY TELEPHONE COMPANY

*vs.*

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

Case No. 271.

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GLENN COUNTY TELEPHONE COMPANY

*vs.*

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

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Case No. 272.

*Decided February 22, 1913.*

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*H. P. Andrews*, for Complainants.

*Hunt Chipley* and *H. D. Pillsbury*, for Defendants.

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REPORT OF THE COMMISSION.

ORDER DENYING APPLICATION FOR A REHEARING.

Complainants in the cases entitled above having filed with this Commission its application for a rehearing in said cases and due consideration having been given thereto, and no good cause for a rehearing appearing,

*It is hereby ordered* that said application be and the same is hereby denied.

Dated at San Francisco, California. this 22d day of February, 1913.

## DECISION No. 477.

IN THE MATTER OF THE APPLICATION OF CENTRAL PACIFIC RAILWAY COMPANY, SOUTHERN PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY FOR AUTHORIZATION TO MAKE A LEASE OF A CERTAIN RAILROAD; TO MAKE A SALE OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR THE JOINT USE AND POSSESSION OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR RUNNING AND TRACKAGE RIGHTS OVER A CERTAIN RAILROAD; AND TO MAKE A CONTRACT FOR THE JOINT USE OF CERTAIN RAILROAD TERMINALS.

Application No. 409.

*Decided February 24, 1913.*

Heretofore, the Southern Pacific Company secured all of the capital stock of the Central Pacific Railway Company, Central Pacific Railroad Company, Southern Pacific Railroad Company and various other lines of railway within the states of California, Nevada, Utah, Arizona, and New Mexico, by which ownership it secured control of a line of railroad from El Paso to San Francisco and from Ogden to San Francisco. Thereafter, the Union Pacific, owning and operating a railroad between Omaha and Ogden, acquired 46 per cent of the capital stock of the Southern Pacific Company. The Supreme Court of the United States, in the matter of *United States vs. Union Pacific Railroad Company, Southern Pacific Company et al.*, having held, December 2, 1912, that such stock ownership or dominance by the same agency, to wit, the Union Pacific, of two competing transcontinental lines constituted a combination in restraint of trade in violation of the Sherman Anti-trust Act, directed the Union Pacific to divest itself of its ownership of said Southern Pacific stock amounting, par value, to \$126,650,000, and further provided that its decree should not prevent "the Central Pacific connection from Ogden to San Francisco and thereby to control that line to the coast, thus affecting such a continuance of the Union Pacific and Central Pacific as is contemplated by the Acts of Congress under which they were constructed."

The said respective companies thereupon entered into an agreement which contemplates: (1st) the sale by the Union Pacific of the stock of the Southern Pacific; (2d) the sale by the Southern Pacific to the Union Pacific of the Central Pacific stock held by the Southern Pacific; (3d) the cancellation of the leases of the Central Pacific and allied lines held by the Southern Pacific; (4th) the lease for 999 years by the Central Pacific of its line of railroad from Tehama, California, to the Oregon line to the Southern Pacific Railroad Company at an annual rental of 5 per cent upon the value of such line from Tehama to the Oregon line, the value to be agreed upon by the parties, if possible, and, if not, to be determined by arbitration according to the method laid down in the agreement; (5th) the sale by the Central Pacific to the Southern Pacific Railroad Company of the line of railroad now partly completed from Weed, in Siskiyou County, California, to Natron, Oregon, at a valuation to be determined in manner above described; (6th) the lease, for 999 years, by the Southern Pacific Railroad Company and the Southern Pacific to the Central Pacific of



trackage and running rights over the lines of the former companies between Redwood City and San Francisco for through freight trains only at an annual rental of 5 per cent upon the valuation to be determined in manner as above described: (7th) the lease for 999 years by the Southern Pacific and the Southern Pacific Railroad Company to the Central Pacific of its line of railroad from Sacramento by way of Benicia to Oakland at an annual rental of 2½ per cent upon the value of said line to be determined in the manner above described: said lease to give to the lessee an equal joint use with the Southern Pacific Company of said line and no other line is to be admitted to said use without the permission of said Central Pacific; (8th) the lease, for 999 years, by the Southern Pacific and Central Pacific to one another of the joint use of their respective terminals, including industry tracks, at all junctions of their respective lines within city limits.

Said agreement was submitted to this Commission for approval in respect to such provisions thereof over which the Commission has jurisdiction. The Western Pacific Railway Company appeared in opposition.

*Held*, While this Commission has no authority over the sales of capital stock required and contemplated to be made, the entire plan should be considered with a view to determining whether or not the entire plan, which must be accepted or rejected under the circumstances presented, is one designed to bring about in good faith the result contemplated by the mandate of the Supreme Court, to wit, to produce active and actual competition between these two transcontinental lines.

Accordingly, the effect of the consummation of the plan upon interstate shipments and intrastate traffic discussed. At the present time, the local lines of the Southern Pacific and the Central Pacific form one system within this State, reaching from Oregon to the Mexican line, and from Yuma and a point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan, as set forth in the agreement, will be the substitution as to a greater part of this territory of two agencies to perform the work now performed by one. The opinion expressed, on grounds stated, that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion that the advantage to shippers as to transcontinental freight will be negligible if the provisions of the agreement are carried out, leads to the suggestion that, in bringing about the design of Congress that the Central Pacific and the Union Pacific should be one continuous transcontinental line, it would be better to accomplish such result by the sale to or long term lease by the Union Pacific of the line of the Central Pacific from Ogden to Sacramento and thence via Stockton, Niles and Oakland to San Francisco, being a portion of the continuous line referred to in 18 Statutes at Large, page 111, Chapter 331 (June 20, 1874), instead of, as proposed, by the sale of the stock of the Central Pacific by the Southern Pacific, such sale not being required in the said decree of the Supreme Court.

*Held*, With respect to the proposed method of determining values, this Commission has heretofore held that, in cases involving the sale by a public utility of any portion of its property devoted to the public use, or the rental of such property, the valuation shall be subject to the Commission's approval, and there is no reason for departing from this principle in this case.

*Held*, With respect to the proposed 999 year leases, constituting practically leases in perpetuity, except in those cases where approval would be given to a sale of the property and a sale is only prevented by the outstanding obligations which are liens upon the property, a perpetual lease is not warranted; that the leases under consideration may run for a period of fifty years and for a further period until the Commission or other competent state authority, after notice and hearing directs their cancellation or modification, whereupon such cancellation or modification shall be made.

*Held*, With respect to the lease of the Benicia Short Line and the joint use of terminals, including industry tracks, that the grant by the owner of the use of such tracks or facilities to one independent competitor (the Central Pacific), while refusing to grant the same rights to another independent competitor, would work a discrimination which the welfare of this State does not permit and which the Commission will not sanction. If such owner is going to throw its property open to one of its several independent competitors, it must play fair with the others and permit its use by them also, on terms which shall provide for a just compensation, to the extent to which the capacity of the property reasonably permits. While there is some argument in favor of the joint use of certain terminals by the Southern and Central Pacific to the exclusion of other lines, particularly as affects such a terminal as the Oakland Pier, still, under all the circumstances of this case, the provision is not justified that only by the joint approval of these companies are these terminals, including industry tracks, as the agreement is interpreted, to be used by any other company.

Application granted, express conditions being imposed based upon the above findings.

*McCutchen, Olney & Willard* and *W. W. Cotton*, for Central Pacific Railway Company.

*Wm. F. Herrin* and *Guy V. Shoup*, for Southern Pacific Company and Southern Pacific Railroad Company.

*Chas. S. Wheeler* and *Allan P. Matthew*, for Western Pacific Railway Company.

*Robert T. McKisick*, city attorney, for City of Sacramento.

*Ben F. Woolner*, city attorney, for City of Oakland.

*Seth Mann*, for San Francisco Chamber of Commerce.

#### REPORT OF THE COMMISSION.

On February 17, 1913, the railroads herein mentioned applied to this Commission for its approval of five certain proposed transactions hereinafter more specifically referred to. On the second day of December, 1912, the Supreme Court of the United States, in the case of *United States vs. Union Pacific Railroad Company, Southern Pacific Company et al.*, rendered a decision declaring the ownership by said Union Pacific Railroad Company (hereinafter referred to as the Union Pacific) of certain shares of the capital stock of the Southern Pacific Company (hereinafter referred to as the Southern Pacific) to be a combination in restraint of trade and decreeing that said Union Pacific should dispose of said stock of the Southern Pacific, and likewise providing for an injunction against the voting of the stock of the Southern Pacific by the Union Pacific and prohibiting the payment of any dividends upon said stock of the Southern Pacific.

In order to better understand the issues before this Commission a brief review of the history of this case is advisable.

Heretofore the Southern Pacific had secured all of the stock of the Central Pacific Railway Company (hereinafter referred to as the Central Pacific), Central Pacific Railroad Company, Southern Pacific Railroad Company and various other lines of railway within the states

of California, Nevada, Utah, Arizona, and New Mexico, by which ownership the said Southern Pacific secured control of a line of railroad from El Paso to San Francisco and from Ogden to San Francisco. Thereafter the Union Pacific, by securing control of 46 per cent of the stock of the Southern Pacific, secured what amounted to actual control of the Southern Pacific, thereby placing the Union Pacific in a position so that at the time of the bringing of the suit in question it had actual control of a line of railroad from Omaha to San Francisco, comprising the lines of the Union Pacific and the Central Pacific, a second line of railroad from El Paso to San Francisco, operated by the Southern Pacific, a third line of railroad from Salt Lake to Los Angeles, operated by the San Pedro, Los Angeles and Salt Lake Railway Company, and a fourth line of railroad from Granger, Wyoming, and Ogden, Utah, to Portland, Oregon, including all of the lines heretofore described.

The Supreme Court of the United States, in the case of *United States of America vs. Union Pacific Railroad Company*, heretofore referred to, held that the dominance by the Union Pacific of the lines of the Southern Pacific constituting the so-called Sunset route from El Paso to San Francisco, and the route from Ogden to San Francisco, brought about the ownership or dominance by the same agency of two competing transcontinental lines, thereby bringing about a combination in restraint of trade, in violation of the so-called Sherman anti-trust act. As has already been said, the court decided that to destroy such combination the Union Pacific should divest itself of its ownership of Southern Pacific stock, amounting to the aggregate amount of \$126,650,000 par value.

In accordance with such decision, the various companies have agreed upon a certain agreement (hereinafter referred to as the agreement) which has been filed with this Commission, and in part approved by the attorney general of the United States. This agreement, in addition to providing for the sale of the stock of the Southern Pacific held by the Union Pacific to the stockholders of the Union Pacific and the Southern Pacific in the proportion of one share of this stock owned by the Union Pacific to each four shares of Union Pacific stock, and one share of said Southern Pacific stock to each three shares of Southern Pacific stock owned by stockholders other than the Union Pacific, provides also for the sale by the Southern Pacific of the stock of the Central Pacific theretofore acquired by said Southern Pacific. This provision, the evidence shows, is the result of the suggestion of the attorney general of the United States, he having apparently taken the position that the ownership by the Southern Pacific of the Central Pacific stock constitutes the same kind of prohibited act, under the Sherman anti-trust act, as the ownership by the Union Pacific of

Southern Pacific stock brought about. Admittedly, however, the provision of the agreement requiring the sale of the stock of the Central Pacific by the Southern Pacific is in excess of the requirements of the decree of the Supreme Court of the United States. The only portion of that decree which relates at all to a relationship between the Union Pacific and the Central Pacific is that which provides that the decree shall not prevent "the Central Pacific connection from Ogden to San Francisco and thereby to control that line to the coast, thus affecting such a continuance of the Union Pacific and Central Pacific as is contemplated by the acts of Congress under which they were constructed." The acts of Congress referred to provide that the Central Pacific and the Union Pacific shall be operated and used for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected continuous line (12 Statutes at Large, 489-495, enacted July 1, 1862), and to afford and secure to each equal advantages and facilities as to rates, time and transportation without any discrimination of any kind in favor of the road or business of any or either of said companies or adverse to the road or business of any or either of the others (31 Statutes at Large 356, enacted July 2, 1864).

The only thing provided in the agreement which was in accordance with the positive admonition of the Supreme Court is the sale by the Union Pacific of the stock of the Southern Pacific. Everything else provided in the agreement is, in our judgment, in excess of the requirements of the Supreme Court; but it is presupposed in the agreement that the design of the Attorney General of the United States was to bring about at the same time the dissolution of the Southern Pacific and Union Pacific and the Southern Pacific and the Central Pacific in accordance with the suggestion of the Supreme Court hereinbefore referred to, which suggestion, however, went merely to an outlet for the Union Pacific over the lines of the Central Pacific to the coast, in accordance with the original plan of Congress as laid down in the statutes heretofore referred to, and did not in any way necessitate the sale by the Southern Pacific of all the Central Pacific feeders within this State.

The agreement presented to this Commission, a part of which requires the approval of this Commission and a part of which does not, contemplates:

*First*—The sale by the Union Pacific of the stock of the Southern Pacific heretofore referred to.

*Second*—The sale by the Southern Pacific to the Union Pacific of the Central Pacific stock held by the Southern Pacific.

*Third*—The cancellation of the leases of the Central Pacific and allied lines held by the Southern Pacific.

*Fourth*—The lease for 999 years by the Central Pacific of its line of railroad from Tehama, California, to the Oregon line, to the Southern Pacific Railroad Company at an annual rental of 5 per cent upon the value of such line from Tehama to the Oregon line as determined by a method which will hereinafter be discussed.

*Fifth*—The sale by the Central Pacific to the Southern Pacific Railroad Company of the line of railroad, now partly completed, from Weed, in Siskiyou County, California, to Natron, Oregon, at a valuation to be determined as hereinafter provided.

*Sixth*—The lease for 999 years by the Southern Pacific and the Southern Pacific Railroad Company to the Central Pacific of its line of railroad from Sacramento by way of Benicia to Oakland at an annual rental of  $2\frac{1}{2}$  per cent upon the value of said line to be determined in a manner hereafter described. This lease is to give to the lessee an equal joint use with the Southern Pacific Company of said line and no other line is to be admitted to said use without the permission of said Central Pacific.

*Seventh*—The lease for 999 years by the Southern Pacific and Central Pacific to one another of the joint use of their respective terminals, including industry tracks, at all junctions of their respective lines within city limits.

*Eighth*—The lease for 999 years by the Southern Pacific Railroad Company and the Southern Pacific to the Central Pacific of trackage and running rights over the lines of the former companies between Redwood City and San Francisco, for through freight trains only, at an annual rental of 5 per cent upon the valuation, to be determined as hereinafter set out.

The entire consideration for these various trades, aside from the annual rental provided, is to be the assumption by the Union Pacific of approximately two hundred million dollars of bonded indebtedness of the Central Pacific and the payment to the Southern Pacific of about \$104,000,000.

We, of course, accept without question the mandate of the Supreme Court, and it is our desire to exercise whatever authority we have in this matter, in a manner which will bring about the design of the Supreme Court to produce active and actual competition between these two transcontinental lines. However, over the sale of the stock of the Southern Pacific by the Union Pacific as ordered by the Supreme Court, we, of course, have no authority. Neither have we power under the Public Utilities Act to require or to prevent the sale of the stock of the Central Pacific, one foreign corporation, by the Southern Pacific, another foreign corporation, as provided for in the plan of the attorney general. However, the representatives of both the Union Pacific and the Southern Pacific have testified that this plan as presented in the

agreement must be carried out without substantial change, and we feel that the entire plan is one which should be considered by us with a view to determining whether or not the entire plan which must be accepted or rejected under the circumstances herein presented, is one designed to bring about in good faith the result contemplated by the mandate of the Supreme Court.

We concede that the Attorney General in urging the sale of the Central Pacific stock by the Southern Pacific, merely has in mind the fact that by the control of the Central Pacific by the Southern Pacific, the latter company, a competing transcontinental line with the Union Pacific and Central Pacific, one transcontinental line under the design of Congress, is controlling a part of this transcontinental line and thereby is in directly the same position as regards the western or Central Pacific end of this line as the Union Pacific is with reference to the eastern or Union Pacific end thereof. That the elimination of this condition does not require the sale of the stock of the Central Pacific by the Southern Pacific is plain. This, of course, is but one method of bringing about the result desired by the Attorney General. It is our opinion that this result could be equally well brought about by the sale to or long-term lease by the Union Pacific of the line of the Central Pacific from Ogden to Sacramento and thence via Stockton, Niles and Oakland to San Francisco, being a portion of the continuous line referred to in 18 Statutes at Large, page 111, chapter 331 (June 20, 1874).

The plan presented to us in this agreement contemplates the control by the Union Pacific not only of a line to the coast, but also of many important feeders owned by the Central Pacific in northern and central California. As a matter of fact, the acquisition of the entire Central Pacific holdings by the Union Pacific will give it an entry into all of the important centers of population in California north of the Tehachapi Mountains, while its control by stock ownership of the San Pedro, Los Angeles and Salt Lake Railroad Company from Salt Lake to Los Angeles, with the connections of the Oregon Short Line from Salt Lake to Ogden, gives it an entry into the region south of the Tehachapi Mountains, and its ownership of the Oregon Short Line and the Oregon Railway and Navigation Company gives it access to Portland and other Oregon points. The Southern Pacific, on the other hand, while it is left with its Coast line from San Francisco to Los Angeles, will, in our opinion, if this agreement is consummated, compete at a disadvantage at all points north of the Tehachapi Mountains with the Union Pacific-Central Pacific line. In fact, it is in evidence in this case from the testimony of the representatives of the Southern Pacific itself, that that line will be excluded from practically all of the deciduous fruit business in California, as well as a major portion of the dried fruit

business and a large portion of the citrus fruit business originating at points north of the Tehachapi Mountains.

We do not believe it necessary to the determination of the questions that are now presented to us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated. Mr. Sproule, president of the Southern Pacific, testified that 47 per cent of the traffic carried by the Southern Pacific as it now exists, controlling as it does the Central Pacific to Ogden, passes through the El Paso gateway. This, of course, includes practically all the Southern Pacific's traffic originating south of the Tehachapi Mountains and all of the traffic moving by water from Galveston over the Southern Pacific and Gulf line, and necessarily includes but a small percentage of the business produced north of the Tehachapi Mountains. Under present conditions, the Southern Pacific, having regard solely to traffic convenience, carries by way of its Sunset route only a comparatively small amount of freight which originates at points north of the Tehachapi Mountains. It would appear that under the circumstances of this case, the traffic will largely move over the most convenient and expeditious route. Such being the case, we are justified in concluding that for most of the traffic originating north of the Tehachapi Mountains, the Sunset route is a less convenient route than the route by way of Ogden gateway, and if this conclusion is correct, the Southern Pacific will compete at a disadvantage for most of this traffic when the ownership of the lines through the Ogden gateway and the El Paso gateway is in the hands of competing owners. Thus, if the Union Pacific secures control of the Central Pacific with its feeders as far south as Goshen and into practically all of the important commercial centers in northern and central California, the Southern Pacific will be placed in the position of the inferior road at all of these points, while if the Union Pacific were to secure merely the control of the main line of the Central Pacific from Ogden to San Francisco, the condition would be reversed and the Union Pacific-Central Pacific line would compete at a disadvantage or be compelled to build additional feeders.

We do not pretend to say, nor do we consider it necessary to decide, how serious an impairment of the Southern Pacific will be brought about by the securing of the Central Pacific main line and feeders by the Union Pacific, but we are of the opinion that the present commanding position of that road cannot be maintained under the contract which is presented to us for approval, and that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line.

The desire of the Supreme Court and the Attorney General to

produce active competition between these two transcontinental lines, of course, is founded in the belief that such competition will produce advantageous results to the shippers. We do not believe, however, that any appreciable reduction of transcontinental rates will be brought about by the unmerging of these lines, particularly under the terms of the agreement here under consideration. If, however, active and bona fide competition is produced between these lines there will be more striving after business and, consequently, probably some improvement in service—how great it is impossible to determine. We do not believe that the improvement in service will be very marked, because of the fact that the freight east and west through both the Ogden and El Paso gateways is at the present time carried in active competition with two other transcontinental lines, namely, the Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railway Company.

Believing as we do that the plan here under consideration will not substantially benefit the shippers of transcontinental freight, either in rates or in service, it is well to consider what, if any, effect will be the natural result of this arrangement upon local traffic. At the present time, the local lines of the Southern Pacific and the Central Pacific form one system within this State, reaching from Oregon to the Mexican line, and from Yuma and a point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan as set forth in this agreement will be the substitution as to a great part of this territory of two agencies to perform the work now performed by one.

While the representatives of both the Union Pacific and the Southern Pacific state positively that it is contrary to their policy to permit the reorganization scheme to increase the rates or to interfere with the service locally within the State, yet we cannot refrain from observing that this result usually follows upon a substitution of two agencies in the performance of a service theretofore performed by one. We invariably have it urged upon us in rate controversies before the Commission, where rates are to be made over two connecting lines that the joint movement over two connecting lines is more expensive to the carriers in the aggregate than a single movement over one line between the same points. Therefore, regardless of the present disposition of the parties hereto, we feel that serious consideration must be given by the Commission to the possibility or probability of applications which may hereafter be made by carriers to increase rates in this State in cases where, as the result of the consummation of this agreement, points now upon one line may, by reason of the dismemberment of the Southern Pacific lines in this State be found located one solely on the Southern Pacific and the other solely on the Central Pacific.



It is our disposition to believe that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion we have already expressed that the advantage to shippers as to transcontinental freight will be negligible if the provisions of this contract are carried out, leads us to suggest that it would be better to adopt the other method already suggested of bringing about the design of Congress in providing that the Central Pacific and the Union Pacific should be one continuous transcontinental line, namely, by the sale or long-term lease of the line of the Central Pacific from Ogden to Sacramento to the Union Pacific and the provision for a trackage right from Sacramento to bay points for the Union Pacific and the retention by the Southern Pacific of the remainder of the Central Pacific system.

Having given our views upon that portion of the contract, which while involved in the entire plan does not specifically require our approval, we shall now consider those matters for which our approval is required.

The lease by the Central Pacific of its line of road from Tehama to the Oregon line, to the Southern Pacific Railroad Company for 999 years, we believe, is unobjectionable, and should meet with our approval, except as to the method of determining the rental thereof. Inasmuch as the same fault which we find with the method here involved is inherent in the method of determining the rentals in each instance and the sale price of the road from Weed to Natron, it is well for us at this time to point out our objection and to suggest a remedy.

The agreement provides that the Southern Pacific shall pay to the Central Pacific an annual rental of 5 per cent of the value of the line to be leased, the value to be agreed upon by the parties, if possible, and if not, to be determined by arbitration according to a method laid down in the agreement.

This Commission has heretofore held that in cases involving the sale by a public utility of any portion of its property devoted to the public use, or the rental of such property, the valuation shall be subject to this Commission's approval, and we see no reason for departing from this principle in this case. While we do not disapprove of the plan of arriving at the valuation outlined in the agreement as a preliminary ascertainment of such value, still for such value to have final effect it will be necessary for this Commission in each instance to pass upon it. The observation applies to all cases of sale or lease herein considered.

In the Tehama-Oregon line transaction, we do not object to the term of 999 years, constituting, of course, practically a perpetual lease,

because we conceive this to be a case wherein a sale of this property would meet with our approval, and where such sale is only prevented by the outstanding bonded obligations rendering a sale impracticable.

We likewise approve of the provision for the sale of that portion of the Weed-Natron branch which is located in California, except as to the valuation, as heretofore stated. The same may be said as to the Redwood-San Francisco lease, except as to the term thereof. Except in those cases where we would approve a sale of the property and a sale is only prevented by the outstanding obligations which are liens upon the property, we think a perpetual lease is not warranted. In other words, except in those cases where we would approve a sale we will not approve a perpetual lease. This is equally applicable to the term of 999 years provided in all of the other leases which are hereafter to be considered.

The Commission is, however, willing to permit the leases in this case to run for a period of fifty years and for the further period until the Commission or other competent state authority, after notice and hearing, directs their cancellation or modification, whereupon such cancellation or modification shall be made.

The city of Sacramento was represented at the hearing by its city attorney, who stated that the city was at present in litigation with the parties hereto, or some of them, in the matter of city franchises which the city claims have expired, and that the city expected that additional litigation as to other city franchises would soon be initiated. The city attorney requested that the Commission insert in its order a condition to the effect that no rights of the city should be prejudiced by the order. The city attorney of Oakland made a similar request. The attorneys for the applicants herein agreed that such condition might be inserted and the Commission will do so, although it is of the opinion that no act on its part could be construed to revive an expired city franchise or otherwise prejudice the cities with respect to such franchise.

The provision for the lease of the Benicia short line and the joint use of terminals, including industry tracks, are the ones to which we find the most serious objection. The agreement contemplates that the Southern Pacific shall grant to the Central Pacific for the Union Pacific the equal joint use and possession of the short line from Sacramento to Oakland via Benicia, at an annual rental, and that no additional company may use the tracks so leased unless it has first secured the written consent of both the Southern Pacific and the Central Pacific. In other words, these two companies are to have the use of these very desirable tracks to the exclusion of any other railway company, unless both the Southern Pacific and the Central Pacific concur in letting in

the stranger. We recognize fully that this property now belongs solely to the Southern Pacific Railroad Company and is operated solely by the Southern Pacific. Nevertheless, the grant by the Southern Pacific of the use of its tracks to one independent competitor (the Central Pacific) while refusing to grant the same rights to another independent competitor (the Western Pacific) would work a discrimination which the welfare of this State does not permit and which this Commission will not sanction. If the Southern Pacific is going to throw its property open to one of its several independent competitors, it must play fair with the others and permit its use by them also, on terms which shall provide for a just compensation, to the extent to which the capacity of the property reasonably permits. If the present plan of a sale by the Southern Pacific of the Central Pacific stock to the Union Pacific be abandoned and in lieu thereof the Union Pacific shall buy the line of the Central Pacific between Ogden and Sacramento or secures long-term lease thereof, with lease or trackage rights thence into San Francisco, other considerations might arise. It might then be held that the Union Pacific would be acting in accordance with the plan of Congress to secure a connected line of railway via the Union Pacific and the Central Pacific to the coast and that the Central Pacific was not acting voluntarily in granting the trackage rights to enable the Union Pacific to reach the coast from Sacramento. This effect of the Federal statutes heretofore referred to would confine the right to an outlet for the Union Pacific to the Stockton-Niles route.

While there is some argument in favor of the joint use of certain terminals by the Southern and Central Pacific to the exclusion of other lines, particularly as affects such a terminal as the Oakland Pier, still we do not believe that under all the circumstances of this case the provision that only by the joint approval of these companies are these terminals, including industry tracks, as we interpret the agreement, to be used by any other company is justified. A condition concerning this matter will be inserted in the order.

We are not unmindful of the fact that, as testified by both Judge Lovett and Mr. Sproule, these companies are more or less under duress to contract. On the one hand the stock of the Southern Pacific owned by the Union Pacific is in the hands of the court for sale, and if an arrangement is not consummated before ninety days shall have elapsed after the decision of the court, this stock is to be placed in the hands of a receiver to be sold as the court directs. It is testified that the Attorney General is threatening proceedings against the Southern Pacific if it does not divest itself of control of its alleged competing line, the Central Pacific, and we appreciate the desire of the parties to bring about a solution of their troubles which will result in as little

financial loss to them as possible, yet we believe it is our duty to have in mind the effect of any arrangement which may be designed upon not only the contracting parties here, but the public. As we have already indicated, we do not believe the sale of the stock of the Central Pacific is necessary to bring about the result desired by the Supreme Court, or even by the Attorney General, but if Federal authorities acting within their jurisdiction in this matter, which is wholly without our jurisdiction, shall decide that the sale of this stock must be made, then we do not feel that it will be possible for us to protect the public beyond that protection which may be accorded by the imposition of conditions specified in the order herein, which conditions, while not designed to be oppressive to the contracting parties, have as their object the restoration of real competition in local traffic in addition to the competition in transcontinental traffic which is designed by the Attorney General.

We submit herewith the following form of order:

**ORDER.**

Central Pacific Railway Company, Southern Pacific Railroad Company and Southern Pacific Company having filed with this Commission their application for an order authorizing (a) the lease by the Central Pacific Railway Company to the Southern Pacific Railroad Company of its line of railway between Tehama, California, and the California-Oregon boundary line; (b) the sale by the Central Pacific Railway Company to the Southern Pacific Railroad Company of so much of its line of railway between Weed, California, and Natron Station, Oregon, as lies within the State of California; (c) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pacific Railway Company of the equal joint use and possession of the line of railway of the grantees between Sacramento and Oakland via Benicia and Port Costa, at an annual rental; (d) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pacific Railway Company of trackage and running rights between Redwood City and San Francisco for the operation of through freight trains, only, at an annual rental, and (e) the grant by the Southern Pacific Railroad Company (or the Southern Pacific Company) to the Central Pacific Railway Company and the grant by the Central Pacific Railway Company to the Southern Pacific Railroad Company (or the Southern Pacific Company) of the joint and equal use of all terminals, including industry tracks at all junctions of their respective lines within city limits, at annual rentals,—all as set forth in said application on file with this Commission; and a public hearing having been held on said application and the Western Pacific Railway Company having appeared in opposition to the granting of said application.

and the Commission being fully advised in the premises, we hereby find as a fact that public convenience and necessity will not be served by the granting of said application except on the conditions herein-after specified. Basing our order on this finding of fact, and on the further findings contained in the opinion which precedes this order,

*It is hereby ordered* that said application be and the same is hereby granted, but only on the following express conditions and not otherwise, to wit:

1. The price at which the property covered by the agreement between the applicants hereto shall be sold or the valuation on which its rental shall be based, as the case may be, shall be only such price or valuation as shall first have been formally submitted to and approved by the Railroad Commission. This condition shall not be held to be a condition precedent to the consummation of said agreement, but such sale price and rentals shall not be paid or become due until such approval of the Railroad Commission has been secured.

2. The rates and fares which may be filed with the Railroad Commission by any party or parties to said agreement, between points within the State of California, growing out of the altered conditions resulting from said agreement, shall in no case exceed the rates and fares in effect between said points on the twenty-fourth day of February, 1913, over the lines now operated by the Southern Pacific Company. Within sixty days from the effective date of said agreement the railroads parties hereto shall file with this Commission joint rates and fares for the transportation of freight and passengers between all points in the State of California, which said joint rates and fares shall not exceed the present rates and fares of the Southern Pacific Company between the same points now on file with this Commission.

3. The term of each 999-year lease referred to in the agreement, other than the lease of the line of railway between Tehama and the California-Oregon line, as to which the term is approved, shall be fifty years and for such further period of time thereafter, and upon such terms as the Railroad Commission, after notice and hearing, shall have determined to be reasonable.

4. In the event that the Southern Pacific Company and the Southern Pacific Railroad Company hereafter grant to the Central Pacific Railway Company, under the terms of said agreement or otherwise, or any other line, the use or possession of the line of railway known as the Benicia short line, said Southern Pacific Company and Southern Pacific Railroad Company shall grant a similar privilege to any other competing line of railway which may make application therefor, for an equitable compensation, to the extent to which said line may reasonably be used. If the parties cannot agree as to the terms of the use or

possession or the reasonableness of being admitted to said use or possession, they shall make formal application to the Railroad Commission, which will thereupon after proceedings duly had determine the question involved.

5. In the event that any of the companies parties to said agreement shall grant, the one to the other, or to any other railroad company, the use or possession of any of the terminals, including industry tracks, specified in said agreement, said company or companies granting such use or possession shall grant a similar privilege to any other competing line of railway which may make application therefor, for an equitable compensation, to the extent to which such facilities may reasonably be used. In the event that the parties cannot agree, the same proceedings shall be had as in the preceding paragraph. This condition, however, may be modified by the Commission in the event of terminal facilities now jointly used by any two of the parties to said agreement, in such cases as the Commission after a hearing, shall find to be reasonable.

6. Neither this order nor any act done in pursuance of its authority shall be construed as extending, reviving or in any way affecting the term of any franchise or permit or as prejudicing in any way the rights of the State of California or of any city, town, county or other political subdivision thereof.

7. This order shall not become effective for any purpose unless and until all the parties to said agreement shall first have filed with the Railroad Commission a stipulation under the hand and seal of said applicants, duly authorized by the board of directors or other competent governing body of each thereof, agreeing for themselves and their respective successors and assigns, to be bound by and comply in good faith with each condition of this order.

Dated at San Francisco, California, this 24th day of February, 1913.

## DECISION No. 478.

IN THE MATTER OF THE APPLICATION OF CENTRAL PACIFIC RAILWAY COMPANY, SOUTHERN PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY FOR AUTHORIZATION TO MAKE A LEASE OF A CERTAIN RAILROAD; TO MAKE A SALE OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR THE JOINT USE AND POSSESSION OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR RUNNING AND TRACKAGE RIGHTS OVER A CERTAIN RAILROAD; AND TO MAKE A CONTRACT FOR THE JOINT USE OF CERTAIN RAILROAD TERMINALS.

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Application No. 409.

*Decided February 24, 1913. .*

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Understanding that the conditions imposed in the original opinion and order herein will result in the rejection of the agreement, thus rendering necessary further negotiations between the parties, this supplemental opinion specifies the arrangements that will be approved:

*First*—Under specified conditions sanction will be given to an arrangement which puts the Union Pacific in entire or joint control with the Southern Pacific of the Central Pacific line from Sacramento by way of Niles to Oakland. Such conditions involve a long-term lease, freed from the objections urged in the original opinion against the method of arriving at a value, by the Central Pacific to the Union Pacific of the line from Ogden to Sacramento, including the line from Roseville to Tehama. This arrangement will place the Union Pacific at Sacramento in a position in regard to an outlet to the coast different from that occupied by any other line at that point. Under the acts of Congress providing for the construction of the Union Pacific and Central Pacific as construed by the Supreme Court of the United States, it is provided that the Union Pacific have an outlet over the Central Pacific to San Francisco. Such being the case, if the Central Pacific gives to the Union Pacific access to San Francisco from Sacramento over the Central Pacific line between these two points, such agency will have done so, not as a voluntary act, but as a requirement of Congress, and cannot be held as thereby subjecting itself to any penalty or disadvantage by reason of such act. If the above scheme is adopted and the Union Pacific secures exclusive control of the Central Pacific line from Ogden to Sacramento, it may likewise secure exclusive or joint control of the line from Sacramento to Oakland by way of Niles because of the fact that this is the outlet of the Central Pacific referred to in the congressional acts and admitted to be such by the parties to this case.

Also, permission will be given to the exclusive use by the Union Pacific or the joint use by it with the Southern Pacific of such terminals as are incident to this line of railroad from Sacramento, but not the facilities which are incident to any other line independent of this line.

Also, having secured by the above method an outlet to San Francisco, the Union Pacific may not say that it finds itself in Sacramento in any different position as regards any other line from Sacramento to Oakland than is the Western Pacific or any other competing line, and there is no more reason for giving it a right of way over a more advantageous line between Sacramento and Oakland.

even for an adequate consideration, than there is for giving such a right of way to the Western Pacific or any other independent line.

*Second*—If, instead of the leasehold alternative as above suggested, the original plan is adhered to of giving to the Union Pacific, through stock ownership, not only the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland, but also the important feeders from such line, then the approval of the Commission will limit the Union Pacific to the line between Sacramento and Oakland to which this ownership entitled it and the terminals incident thereto. If it is accorded any other terminals or any other route by the voluntary act of the Southern Pacific, or Central Pacific, the conditions imposed in the main opinion and order shall be insisted upon.

Approval likewise will be given to the following arrangements, but only on the conditions outlined in the main opinion and order, to wit: respecting the lease of the line from Tehama to the Oregon state line; the sale of the Weed line; the lease of the Bay Shore cut-off; the lease of the Benicia Short Line from Sacramento to Oakland; the lease of the terminals, including industry tracks, specified in the agreement, the latter to be made definite and specific.

Except as to those facilities of the Central Pacific and Southern Pacific which are so interwoven that it is impossible to require their separation, if the use of any other facilities, such as industry spurs and terminal facilities be accorded by the Southern Pacific to the Central Pacific, or the Central Pacific to the Southern Pacific, then the voluntary according of such use will carry with it, as an annexed condition, the necessity of according similar privilege to any other line similarly situated and willing to pay a reasonable compensation therefor.

*McCutchen, Olney & Willard and W. W. Cotton*, for Central Pacific Railway Company.

*Wm. F. Herrin and Guy V. Shoup*, for Southern Pacific Company and Southern Pacific Railroad Company.

*Chas. S. Wheeler and Allan P. Matthew*, for Western Pacific Railway Company.

*Robertson T. McKisick*, city attorney, for City of Sacramento.

*Ben F. Woolner*, city attorney, for City of Oakland.

*Seth Mann*, for San Francisco Chamber of Commerce.

#### REPORT OF THE COMMISSION.

##### SUPPLEMENTAL OPINION.

Inasmuch as we understand the imposition of the conditions set out in the main opinion and order will result in the rejection of the contract in its entirety, thus rendering further negotiations between the parties necessary, it is proper to set out specifically what arrangements we will approve and the reasons therefor.

The Supreme Court orders one act only, aside from the temporary expedients incidental to the carrying out of the decree, namely, the sale by the Union Pacific of the Southern Pacific stock. It permits, however, to the Union Pacific "the Central Pacific connection from Ogden to San Francisco \* \* \*", thus effecting such a continuity of the Union Pacific and Central Pacific as was contemplated by the acts of Congress under which they were constructed." (*United States vs. Union Pacific Railroad Company et al.*) Recognizing the importance of such a suggestion from the Supreme Court, we will treat the decree as



directing such an outlet over the Central Pacific as here suggested and will assume that it is the duty of any inferior tribunal acting within its jurisdiction to exercise any discretion which it may have in such a manner as to effectuate this design of the Supreme Court as well contained in its suggestion as required by its command. Therefore, we proceed upon the theory that the Union Pacific is to be divested of control of the Southern Pacific by such disposition of the Southern Pacific stock as will make these two lines bona fide independent lines, and that the Union Pacific is to be invested with an outlet to the coast.

The Attorney General of the United States has recognized these two requirements, but he has added an additional requirement, admittedly not commanded or suggested in the decree and which could not be directly brought about except by a new proceeding in the Federal courts prosecuted to a decree favorable to his contention in the Supreme Court of the United States. This is the requirement that the Southern Pacific Company sell the stock of the Central Pacific. We assume, however, that the insistence by the Attorney General upon the sale by the Southern Pacific Company of the stock of the Central Pacific held by it is only incidental to his main design, which is to prevent the control by the Southern Pacific Company which owns the Sunset line by way of the El Paso gateway of a line at least in part competitive therewith to the Ogden gateway. We can not believe that the plan of the Attorney General to bring about his desired result makes necessary anything more than the surrender by the Southern Pacific Company of the Central Pacific main line and its exclusion from any interest therein. Certainly, the main design does not necessitate the surrender by the Southern Pacific to its present dominant ally, but competitor to be, of its most important feeders and all of its advantages secured by reason of its being first in the field. Neither does it contemplate the admission of this formidable rival to the exclusion of any other rival or ally to the joint use of one of its advantageous short lines nor to the exclusive joint use of its important terminals. Neither do we think the Attorney General desires to upset local traffic conditions by breaking a well built system of local lines well suited to serve the local needs of the people of this State into two disassociated sets of branches, some of which begin and end nowhere if we have reference to their separate ownership. These local lines are the result of many years of growth, and any one at all familiar with railroad conditions in this State knows that they can be much more conveniently and economically managed as one local system than by the substitution of two incomplete local systems and two agencies to perform the service now being carried on by one complete system in charge of one agency.

That the Attorney General has in view the bringing about of a result and is not insisting upon any particular method of accomplishing such

result is, we believe, a fair inference. We are confirmed in this by his attitude expressed by telegraph on the first day of the hearing of this case as to the exclusive use of the Benicia cut-off and the terminals of the Southern Pacific by the Union Pacific.

We then conclude that all that the Attorney General adds to the two requirements of the Supreme Court is the one additional which contemplates the disposition by the Southern Pacific Company of its control of the main line of the Central Pacific with which it is supposed to compete by the El Paso route, and that he is not committed to any particular method and that his approval may be expected to any reasonable method of effectually accomplishing this result.

The essential elements of the plan of the Supreme Court as added to by the Attorney General are:

*First*—The sale of the Southern Pacific stock by the Union Pacific.

*Second*—The securing by the Union Pacific of an outlet to the Coast over the Central Pacific line; and

*Third*—The surrender by the Southern Pacific Company of so much of the Central Pacific line as is necessary to prevent said Southern Pacific Company from controlling a line designed to compete with its El Paso route.

With the first requirement we have no direct official concern, but we invite the attention of the Attorney General and the court to the contention of the Western Pacific Railroad Company that the syndicate formed by Kuhn, Loeb & Company, the Union Pacific bankers, is in effect accomplishing by indirection what the Supreme Court refused to permit to be accomplished directly, viz, the purchase by the stockholders of the Union Pacific of the Southern Pacific stock. It is urged that this banking house and the syndicate formed by it are controlled by the large stockholders of the Union Pacific, and that by making Southern Pacific stock an undesirable investment, the stockholders of the Southern Pacific Company will be deterred from buying and the Union Pacific controlled syndicate will thereby secure control of this stock, thus leaving the Union Pacific and Southern Pacific controlled by the same stockholders, an arrangement which the Supreme Court has already condemned.

The two other conditions, we believe, may be readily worked out together so as substantially to meet the requirement of the court and the Attorney General as well. If a lease similar in terms to the one agreed upon to the Tehama-Oregon line of the Central Pacific be made by the Central Pacific to the Union Pacific of the line from Ogden to Sacramento, including the line from Roseville to Tehama, freed from the objection already urged against the method of arriving at a value, this Commission will approve such a lease. We see no reason why a flat price covering the value of this line can not be agreed upon since an

exclusive lease for such a long time would be tantamount to ownership; or a lease with option to purchase, when the bonded indebtedness admits, might be consummated. This arrangement will place the Union Pacific at Sacramento in a position in regard to an outlet to the coast different from that occupied by any other line at that point. Under the acts of Congress providing for the construction of Union Pacific and Central Pacific as construed by the Supreme Court of the United States, it is provided that the Union Pacific have an outlet over the Central Pacific to San Francisco. Such being the case, if the Central Pacific or its successor in interest, gives to the Union Pacific access to San Francisco from Sacramento over the Central Pacific line between these two points, such agency will have done so not as a voluntary act, but as a requirement of Congress, and certainly can not be held as thereby subjecting itself to any penalty or disadvantage by reason of such act. Therefore, if the scheme which we have suggested is adopted and the Union Pacific secures exclusive control of the Central Pacific line from Ogden to Sacramento, it may likewise secure exclusive or joint control of the line from Sacramento to Oakland by way of Niles because of the fact that this is the outlet of the Central Pacific referred to in the congressional acts and admitted to be such by the parties to this case. Therefore, under such conditions we will sanction an arrangement which puts the Union Pacific in entire or joint control with the Southern Pacific of the Central Pacific line from Sacramento by way of Niles to Oakland.

As regards the terminals, we are willing to permit the exclusive use by the Union Pacific of the joint use by it with the Southern Pacific of such terminals as are incident to this line of railroad from Sacramento, but not the facilities which are incident to any other line independent of this line.

Having secured by the method herein outlined an outlet to San Francisco over the line and in a way selected for it by Congress, the Union Pacific may not say that it finds itself in Sacramento in any different position as regards any other line from Sacramento to Oakland than is the Western Pacific or any other competing line, and there is no more reason for giving it a right of way over a more advantageous line between Sacramento and Oakland even for an adequate consideration than there is for giving such a right of way to the Western Pacific or any other independent line. The only warrant for the position of the Union Pacific that it should be allowed to get to San Francisco is derived from the acts of Congress which alone constitute it superior in this respect to other lines. The intentions of Congress having been effectuated by its admission to the use of the line designated by Congress, it may not urge as a right its admission either to the joint or several use of another line. This conclusion has led the Commission

in its main opinion and order to impose as a condition upon the use by the Union Pacific of the Benicia short line the right under similar terms of any other road to use the same.

We have endeavored herein to point out a method which we believe would satisfy the command and suggestion of the Supreme Court and the desire of the Attorney General, and have stated our reasons for recommending this arrangement. If, however, the Attorney General and the Circuit Court in its discretion shall hold that the Southern Pacific shall sell all of the Central Pacific stock to the Union Pacific, thereby giving to the Union Pacific through stock ownership not only the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland, but also the important feeders from such line, we shall not be disposed to withhold our approval to the other provisions of the agreement presented to us on the sole ground that the Federal authorities have adopted the stock ownership plan for the transfer of this property with its attendant disadvantages, and not the plan which we have recommended, which we believe from a careful investigation of the conditions is preferable from the standpoint of the public. In other words, we have deemed it best to point out to the Federal authorities our objection to the control of the entire Central Pacific system by the Union Pacific and have suggested an alternative plan which will meet such objections, but if after having considered our proposal, the Federal authorities, acting within their jurisdiction, adhere to the original plan of the Attorney General, we will waive this objection, because while we consider it important we do not consider it entirely essential. Particularly, do we reach this conclusion by reason of the fact that this Commission has the power to regulate local rates and service and the admitted intention of the parties not to attempt to use the separation of these lines as a means and excuse for increasing the rates and impairing the service.

If the Union Pacific under the permission of the Attorney General and the Federal court is permitted to purchase the stock of the Central Pacific, then, we will limit it to the line between Sacramento and Oakland, to which this ownership entitles it and the terminals incident thereto. If it is accorded any other terminals, or any other route, by the voluntary act of the Southern Pacific Company, we shall insist upon the conditions which we have imposed in the main opinion and order. We, therefore, recommend the arrangement which we have suggested for the acquirement by the Union Pacific of the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland and the branch line from Roseville to Tehama, but, if the Attorney General and the Circuit Court, in spite of such recommendation, desire that the Union Pacific secure the stock of the Central Pacific, thereby securing not only this main line, but the branches, our approval

will be given likewise to the following arrangements, but only on the conditions outlined in the main opinion and order.

We will approve, if application is made therefor, the arrangement outlined in the main decision respecting the lease of the line from Tehama to the Oregon state line; the sale of the Weed line; the lease of the Bay Shore cut-off; the lease of the Benicia short line from Sacramento to Oakland; the lease of the terminals including industry tracks, specified in the agreement, the latter to be made definite and specific hereafter.

We recognize that some of the facilities of the Central Pacific and Southern Pacific are so connected and interwoven that it is practically impossible to require their separation, and the Commission will be disposed to recognize any necessities which may arise from such cause, but if the use of any other facilities, such as industry spurs and terminal facilities of a similar character be accorded by the Southern Pacific to the Central Pacific, or the Central Pacific to the Southern Pacific, then the voluntary according of such use will carry with it as an annexed condition the necessity of according a similar privilege to any other line similarly situated and willing to pay a reasonable compensation therefor. And it shall only be necessary in each instance for the line desiring these privileges to be accorded to it to secure the consent of the owner of such facilities and not the consent of the other company which has been voluntarily admitted to the use.

Dated at San Francisco, California, this 24th day of February, 1913.

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Decision No. 479, grade crossing; not printed. See end of volume.

DECISION No. 480.

IN THE MATTER OF THE APPLICATION OF CITY ELECTRIC  
COMPANY FOR AUTHORITY TO SELL EIGHT HUNDRED  
AND THIRTY-THREE THOUSAND DOLLARS OF BONDS  
HERETOFORE AUTHORIZED TO BE PLEDGED AS COL-  
LATERAL SECURITY.

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Application No. 342.

*Decided February 24, 1913.*

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Bonds in the amount of \$833,000 heretofore authorized to be pledged as collateral are herein permitted to be sold at not less than 84, and the proceeds used in part to extinguish the indebtedness for which the bonds were pledged, and the remainder to reimburse applicant for moneys expended from income during the past five years.

## REPORT OF THE COMMISSION.

## ORDER ON SUPPLEMENTAL APPLICATION.

Application having been made to the Railroad Commission of the State of California by City Electric Company for an order authorizing said company to issue and sell \$833,000 face value of its first mortgage 5 per cent 30-year sinking fund gold bonds, due and payable July 1, 1937, said bonds being in the denomination of \$1,000 each, and numbered 1701 to 1900, both numbers inclusive, and 1942 to 2574, both numbers inclusive, comprising bonds heretofore authorized by this Commission to be pledged as collateral security for moneys borrowed;

And it appearing that the proceeds from the sale of said bonds are intended to be used to reimburse applicant for moneys actually expended from income of applicant during the past five years in paying for the construction, extension, and improvement of the plant of applicant;

And it appearing further that a portion of the proceeds from the sale of said bonds is to be used to liquidate and extinguish the indebtedness for the security of which said bonds were pledged; and the Commission being of the opinion that the expenditures made by applicant, for which the sale of the said \$833,000 of bonds is intended to reimburse the treasury, were not in whole or in part chargeable to operating expenses or income,

*It is hereby ordered* that City Electric Company be and it is hereby authorized to issue and sell \$833,000 of its first mortgage 5 per cent 30-year sinking fund gold bonds, due and payable July 1, 1937, of the denomination of \$1,000 each, and numbered as aforesaid, said bonds being those bonds which applicant was heretofore authorized by this Commission to pledge as collateral security for a loan or loans; said bonds to be issued and sold upon the following conditions and not otherwise, to wit:

1. The bonds herein authorized to be issued shall be sold so as to net applicant not less than 84 per cent of the face value thereof and accrued interest.

2. The money obtained from the sale of the bonds herein authorized shall be used to reimburse applicant for moneys actually expended from income of applicant during the past five years in paying for the construction, extension, and improvement of the plant of applicant.

3. So much of the proceeds from the sale of said bonds as may be necessary shall be used to extinguish the indebtedness for which said bonds were pledged as collateral security.

4. Applicant shall keep true and accurate accounts, showing the sale of the bonds herein authorized to be issued, and on or about the twenty-fifth day of each month shall make verified reports to this Commission,

stating in detail the sale or sales of bonds herein authorized to be issued, the amounts received therefor and the use of the proceeds thereof, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

5. The authority herein granted to sell said bonds shall apply only to bonds sold prior to December 21, 1913.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of February, 1913.

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Decisions Nos. 481, 482 and 483, grade crossings; not printed. See end of volume.

DECISION No. 484.

TEHAMA COUNTY TELEPHONE COMPANY  
*vs.*  
THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 271.

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GLENN COUNTY TELEPHONE COMPANY  
*vs.*  
THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

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Case No. 272.

*Decided March 1, 1913.*

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REPORT OF THE COMMISSION.  
ORDER EXTENDING EFFECTIVE DATE.

*It is hereby ordered* that the effective date provided in paragraph 7 of the order in this proceeding made by the Commission on January 30, 1913, be and the same hereby is extended to and including the tenth day of March, 1913.

By order of the Railroad Commission.

Dated at San Francisco, California, this 1st day of March, 1913.

Decision No. 485, grade crossing; not printed. See end of volume.

DECISION No. 486.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
COUNTIES GAS COMPANY OF CALIFORNIA FOR  
AUTHORITY TO ISSUE ADDITIONAL BONDS.

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Application No. 230.

*Decided March 1, 1913.*

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REPORT OF THE COMMISSION.

THIRD SUPPLEMENTAL ORDER.

The Commission having, on October 14, 1912, made an order in the above entitled proceeding authorizing Southern Counties Gas Company of California to issue from time to time its 30-year 6 per cent first mortgage bonds in the aggregate amount of \$47,000, under its mortgage and deed of trust to Los Angeles Trust and Savings Bank, dated April 1, 1911, upon the condition, among others, that prior to each issuance of such bonds applicant shall have filed with the Commission a verified statement showing that the terms of said trust deed have been complied with fully, and the Commission shall have made a supplemental order permitting the issuance of such bonds;

And this Commission having, in supplemental orders, authorized Southern Counties Gas Company of California to issue, under the original order of this Commission, bonds to the amount of \$29,500;

And application having been made on February 25, 1913, by Southern Counties Gas Company of California for authority to issue \$5,500 additional of said bonds, under the original order of this Commission of October 14, 1912, and it appearing that applicant has complied with the requirements of its mortgage and deed of trust,

*It is hereby ordered* that Southern Counties Gas Company of California be and it is hereby authorized to issue its 30-year 6 per cent first mortgage bonds to the amount of \$5,500 face value, upon the conditions set forth in this Commission's order in the above entitled proceeding made on October 14, 1912, which conditions are hereby made a part of this order.

By order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of March, 1913.



Decisions Nos. 487 and 488, grade crossings: not printed. See end of volume.

DECISION No. 489.

LIVE OAK WATER USERS' ASSOCIATION  
*vs.*  
SUTTER BUTTE CANAL COMPANY.

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Case No. 311.

*Decided March 4, 1913.*

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REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Live Oak Water Users' Association, complainant in this proceeding, having on February 24, 1913, made written request to this Commission that the complaint in this proceeding be dismissed,

*It is hereby ordered* that the complaint in this proceeding be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 4th day of March, 1913.

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DECISION No. 490.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN  
PACIFIC COMPANY FOR AN ORDER GRANTING PERMIS-  
SION TO INCREASE THE RATE ON COMMON BRICK, CAR-  
LOADS, TO TWENTY-FIVE CENTS PER TON OF TWO  
THOUSAND POUNDS, MINIMUM CHARGE FIVE DOLLARS  
PER CAR, FROM CRAYOLD AND CRAYCROFT TO FRESNO,  
CALIFORNIA.

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Application No. 403.

*Decided March 8, 1913.*

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For shipments of brick a distance of three miles from Fresno, applicant charged Craycroft-Herold Brick Company \$5.00 per car flat rate and charged Fresno Brick and Tile Company twenty-five cents per ton with minimum of \$5.00 per car for same commodity shipments of two and one tenth miles. Upon informal complaint of said Tile Company, applicant petitioned for approval to remove the discrimination by increasing the rate in the former instance to 25 cents per ton with minimum of \$5.00 per car. Craycroft-Herold Brick Company appeared in opposition.

The Public Utilities Act, which controls and directs the activities of this Commission, imposes upon the Commission the duty of ascertaining the physical value of all transportation properties in the State of California, such physical value to be used thereafter in assisting it to ascertain what are reasonable rates. The work of arriving at such physical value is being prosecuted by the Commission with the utmost diligence and dispatch consistent with the magnitude of the work, but has not reached that state where the results obtained can be applied to such conditions as are presented by this application. Any decision, therefore, arrived at on this application will not prevent the Commission from reaching a different conclusion when it can use such physical value as an element to be considered in arriving at reasonable rates. The records of applicant during the month of October, 1912, showed 8,206 tons of brick shipped distances from one to twenty-five miles, the average length of haul being thirteen miles and the average rate for the entire movement being forty-four cents per ton. It must be borne in mind that the difference in the cost of handling a carload of any commodity three miles by main line train, as compared to thirteen miles, is very slight.

*Held*, In this case where the manufacturing plants are located on the main line, and where the work of moving the traffic must be done by main line crews and equipment, considering the extent of the movement in question, the Commission is at present of the opinion that the rate of twenty-five cents per ton is a reasonable rate, this opinion being based, as it necessarily must be until an ascertainment of the physical value of the property involved has been arrived at, upon a comparison of rates elsewhere for a similar movement. The decision in Application No. 272 cited as in point.

*Held*, Concerning the claim of the protestant, Craycroft-Herrold Brick Company, that the verbal understanding between it and the Southern Pacific Company constituted a contract, even if it were proved that such contract had been entered into, the contract, of course, cannot stand as against the power of this Commission, under the Public Utilities Act to fix just and reasonable rates.

*Held*, That the rate of twenty-five cents per ton between the points in question, with minimum of \$5.00 per car, is a reasonable one for the present, with the intimation, however, that a different conclusion might be arrived at when further information as to the cost of the movement in question is at hand.

*George D. Squires*, for Applicant.

*Everts & Ewing*, for protestant, Craycroft-Herrold Brick Company.

*Sutherland & Barbour*, for intervenor, Fresno Brick and Tile Company.

#### REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

This application to increase the carload rate on brick from \$5.00 per car flat rate to twenty-five cents per ton, with minimum of \$5.00 per car, from Crayold and Craycroft to Fresno, resulted from an informal complaint lodged with the Commission by the Fresno Brick and Tile Company, which complaint alleged that said Fresno Brick and Tile Company was discriminated against on its shipment of brick in that it was compelled to pay twenty-five cents per ton, with minimum of \$5.00 per car, from its brickyards at Mars to Fresno, a distance of two and one tenth miles, while its competitor, Craycroft-Herrold Brick Company, paid \$5.00 per car flat rate from its brickyards at Crayold and Craycroft to Fresno, each being approximately three miles distant from Fresno.

The informal complaint was taken up with the Southern Pacific Company, which company admitted the discrimination and filed its application to remove said discrimination by increasing the rate on brick carloads from Crayold and Crayercroft to Fresno to twenty-five cents per ton, with minimum of \$5.00 per car. The application came on regularly for hearing in Fresno February 26, 1913.

In justification of its application for permission to increase the rate, as explained above, applicant offered the testimony of its assistant general freight agent, H. G. Toll, and of its district freight and passenger agent, J. F. Hickson. Mr. Toll testified that when the Crayercroft-Herrold Brick Company first established its brickyards at Crayercroft, that company was given a rate of \$4.00 per car, but that the tariff carrying the rate contained a stipulation that the \$4.00 rate applied to cars loaded not to exceed 40,000 pounds maximum, all loading in excess of that maximum to be charged for at the rate of \$4.00 for 40,000 pounds. Later, when the Crayercroft-Herrold Brick Company established its yards at Crayold, and the same rate was put in effect from that point to Fresno, the clerk in the Traffic Department of the Southern Pacific, in issuing the tariff, forgot to insert the stipulation as to the maximum loading of 40,000 pounds. Mr. Toll further testified that very shortly after the brickyard was established at Crayold the minimum rate was increased to \$5.00 per car, and the Traffic Department again omitted to put in the stipulation as to the maximum of 40,000 pounds. His testimony further shows that the spur or sidetrack leading into the brickyard of the Crayercroft-Herrold Brick Company is on the opposite side of the yard from Fresno, with but one connection with the main line, as a result of which it is necessary to take the loaded cars a distance of about three miles farther away from Fresno and place them on a siding where they remain until a freight train moving toward Fresno picks them up and takes them into Fresno. Mr. Toll testified, however, that applicant did not rest its request to advance the rate on the fact that it had to handle the cars in this manner, but based its application upon what he alleged to be a fact that the rate of twenty-five cents per ton asked for was a reasonable rate and that \$5.00 per car is an unreasonably low rate. In support of this, he testified that, at the time these yards were established, the capacity of the cars required to move the traffic was not nearly as great as it now is, and that the cars now being used in this movement could easily be loaded to 100,000 pounds and over, and that the records show that they were being loaded to about 104,000 pounds. His testimony further showed that the switching rate within the limits of the city of Fresno is twenty-five cents per ton, and that the brickyards in question are approximately one mile beyond the city limits.

The testimony of Mr. J. F. Hickson, district freight and passenger agent, in all substantial respects corroborated the testimony of Mr. Toll.

Mr. Frank J. Craycroft, secretary of the Craycroft-Herrold Brick Company, testified that, with other officers of that company, he interviewed the representatives of the Southern Pacific Company before locating the brickyard at Craycroft, and asked for a flat rate without maximum; that the rate of \$4.00 per car, without restriction, was promised; that no mention of a maximum weight was made by the representatives of the Southern Pacific Company. He further testified that later, when the Craycroft-Herrold Brick Company established its yards at Crayold, it agreed to pay, and did pay, a large share of the cost of putting in the spur track at the brickyards. That about one and one half months after the Craycroft-Herrold Brick Company had paid part of the cost of said spur track, the Southern Pacific Company informed said brick company that the rate had been raised to \$5.00 per car. He further testified that his company considered that it had a contract with the Southern Pacific Company that it should receive the rate of \$4.00 per car, the verbal understanding referred to above being considered such contract; that it had always used great diligence in loading and unloading cars, and that in shipping 267 carloads of brick, it had paid demurrage on but four cars. He further testified that if the prayer of applicant was granted and the rate raised to twenty-five cents per ton, said rate would be prohibitive in that the product could be hauled by team to Fresno at a less rate.

The testimony of George D. Herrold, manager of the Craycroft-Herrold Brick Company, and of C. J. Craycroft, president of said company, corroborated the testimony of F. J. Craycroft.

Mr. E. M. Prescott, manager of the Fresno Brick and Tile Company, testifying for that company as intervenor, stated that before the Fresno Brick and Tile Company located at Mars, he saw the district freight and passenger agent of the Southern Pacific and received assurance that the rate from Mars to Fresno would be the same as from Crayold and Craycroft to Fresno; that instead of that, the Fresno Brick and Tile Company was charged twenty-five cents per ton, with a minimum of \$5.00 per car, and that when he saw the representative of the Southern Pacific Company with reference to this rate, he was told that the rate from Crayold and Craycroft was made in error. Intervenor offered no testimony as to the reasonableness of the rate of twenty-five cents per ton, but simply rested on the statement of its counsel that it desired the discrimination against it removed.

Upon this testimony as to the circumstances and facts of the case, the Commission must decide whether the rate asked for by applicant is a reasonable rate.

The Public Utilities Act, which controls and directs the activities of this Commission, imposes upon the Commission the duty of ascertaining

the physical value of all transportation properties in the State of California, such physical value to be used thereafter in assisting it to ascertain what are reasonable rates. The work of arriving at such physical value is being prosecuted by the Commission with the utmost diligence and dispatch consistent with the magnitude of the work, but has not reached that state where the results obtained can be applied to such conditions as are presented by this application. Any decision, therefore, arrived at on this application will not prevent the Commission from reaching a different conclusion when it can use such physical value as an element to be considered in arriving at reasonable rates. It is, doubtless, true that if a railroad company could have practically all of the traffic it could move for a distance of three miles, and have its equipment promptly loaded and unloaded, it would find the rate of \$5.00 per car highly remunerative, but in this case where the manufacturing plants are located on the main line, and where the work of moving the traffic must be done by main line crews and equipment, considering the extent of the movement in question, the Commission is at present of the opinion that the rate of twenty-five cents per ton is a reasonable rate, this opinion being based, as it necessarily must be until an ascertainment of the physical value of the property involved has been arrived at, upon a comparison of rates elsewhere for a similar movement.

The customary and almost universal rate within the switching limits of incorporated cities is twenty-five cents per ton, with a minimum of \$5.00 per car; and in its decision in Application No. 272, this Commission held that on a movement of traffic from the interchange track of the Belt Line Railway in San Francisco to industries on the Southern Pacific Company's lines, that company was entitled to a rate of twenty-five cents per ton, with minimum of \$5.00 per car. In the case at bar, the testimony showed that much of the product manufactured by protestant company moves to points beyond Fresno, and that on such shipments the Crayercroft-Herrold Brick Company is given the same rate from its brickyards as from Fresno.

With reference to the testimony of the witnesses for protestant that the rate of twenty-five cents per ton will be prohibitive, and that protestant will be compelled to haul its product by team, the Commission can only explain that this is a matter with which it has nothing to do, its sole function being in this case to remove discrimination and to pass, to the best of its ability, upon the reasonableness of the rates put into effect to remove such discrimination.

Concerning the claim of the protestant, Crayercroft-Herrold Brick Company, that the verbal understanding between it and the Southern Pacific Company constituted a contract, even if it were proved that such contract had been entered into, the contract, of course, cannot stand as against the power of this Commission, under the Public Utilities Act, to fix just and reasonable rates.

As to the protestant contributing to the cost of the building of the industry tracks, it has been customary for all carriers generally, throughout the country, to require the parties for whom industry tracks are constructed, to bear the expense of the perishable material, labor, etc. In other words, the carriers themselves pay only for that material which they would receive back in substantially good condition should the enterprise fail, and I presume this is what was required of the Craycroft-Herrold Brick Company.

We find from an examination of the records of the Southern Pacific Company that, during the month of October, 1912, that company handled 8,206 tons of brick, distances from one to twenty-five miles, the average length of haul being thirteen miles. The average rate received for this entire movement was forty-four cents per ton. It must be borne in mind that the difference in the cost of handling a carload of any commodity three miles by main line train, as compared to thirteen miles, is very slight. The principal cost for such short movements is the stopping of trains, and switching to and from the industries. Particularly is this so when handled in way freight trains where crews are frequently late and paid overtime for such delays.

We, therefore, find that the rate of twenty-five cents per ton on brick carloads from Crayold and Craycroft to Fresno, with minimum of \$5.00 per car, is a reasonable one for the present, with the intimation, however, as above stated, that we may arrive at a different conclusion when further information as to the cost of the movement in question is at hand.

I recommend the following order:

**ORDER.**

The Southern Pacific Company having applied for permission to increase the rate on common brick, carloads, from \$5.00 flat per car to twenty-five cents per ton, with \$5.00 per car minimum, on shipments from Crayold and Craycroft to Fresno, California, and the Commission finding at the hearing of the application that the rate of twenty-five cents per ton, with minimum of \$5.00 per car, on such movement is, to the best of its present knowledge, a reasonable rate,

*It is hereby ordered* that the Southern Pacific Company be and it is hereby authorized to amend its tariffs increasing the rate from Crayold and Craycroft on brick, carloads, from \$5.00 per car flat to twenty-five cents per ton, with \$5.00 per car minimum charge.

The foregoing opinion and order are hereby approved, and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of March, 1913.

## DECISION No. 491.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF SIX PER CENT DEBENTURE BONDS OF THE FACE VALUE OF FIVE HUNDRED THOUSAND DOLLARS AND THE EXECUTION OF AN INDENTURE TO CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK AND FRANK H. JONES, AS TRUSTEES, PROVIDING THE TERMS AND CONDITIONS UPON WHICH SAID BONDS ARE TO BE ISSUED AND THE RIGHTS AND SECURITY OF THE HOLDERS THEREOF.

Application No. 344.

*Decided March 8, 1913.*

By the terms of the trust deed, applicant may issue first mortgage bonds in an amount, par value, not to exceed 75 per cent of the actual and reasonable cash cost of permanent extensions and additions to its property as the same existed on January 1, 1909. In financing the difference between the proceeds realized from the sale of bonds issued and the cost of such improvements, a floating indebtedness has been incurred as follows: Standard Gas and Electric Company, \$401,500; four San Diego Banks, \$100,000; C. C. Moore & Company, \$8,533.35; General Electric Company, \$36,511.82; accounts payable \$163,152.92; total \$709,698.09. In order to provide means for discharging said indebtedness in part, application is made for approval of execution of an indenture securing a total issue of \$3,000,000 six per cent 10-year debenture bonds and of the sale at present of \$500,000 of such bonds at not less than 95 per cent of their face value. To establish its right to issue such bonds, evidence was introduced by applicant showing an alleged excess of capital expenditures, over proceeds from the sale of securities, from January 1, 1909, to November 30, 1912, of \$824,024.53. Upon deducting certain items amounting to \$396,994.77 not properly subject to capitalization, and the amount of the proceeds to be derived from the sale of \$204,000 first mortgage bonds, previously authorized to be used to discharge the obligations incurred for new construction (Application No. 378), the entire surplus of proper capital expenditures, over receipts from security sales, found to be less than \$237,000, whereas in 1912 applicant paid out to Standard Gas and Electric Company, the parent corporation, special dividends in the amount of \$255,600.

*Held*, With respect to the certain items found not properly capitalizable: If a bond discount were capitalized by the issue of other bonds, the amount of bonds outstanding in any case in which the original bonds were sold at a discount would manifestly be in excess of the value of the property, a thing which this Commission will not permit. The expenses incurred in a municipal ownership campaign are not properly chargeable to capital account. Nothing has so far come of the investigation made by Lovell or the Warners Ranch power investigation. These items should certainly be held in suspense until they actually add to the value of applicant's property. The securities owned by applicant, as specified, also are not proper subjects for capitalization.

*Held*, While a strict policy might demand, in view of the declaration of the special dividend in excess of the sum of \$237,000, that no debenture bonds be authorized at the present time, that the effect of such a conclusion be limited to the moneys now due to the Standard Gas and Electric Company and that

the debenture bonds sufficient only to pay the amounts now due to the four San Diego banks be issued. The Commission's attitude with reference to the issue of debenture bonds to cover the difference between the cost of additions and extensions, and the proceeds realized from the sale of securities, discussed.

A. H. Sweet, for Applicant.

#### REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application for authority to issue debenture bonds of the face value of five hundred thousand (\$500,000) dollars, and to execute an indenture providing the terms and conditions upon which the bonds are to be issued, and the rights and security of the holders thereof.

In stating the purpose of the proposed issue, the application refers to the fact that under applicant's first mortgage, it can receive from the trustees bonds of a par value not to exceed in the aggregate 75 per cent of the actual and reasonable cash cost to the company of permanent extensions and additions to its property as the same existed on January 1, 1909. The petition thereupon states that by reason of said provisions of its trust deed, the petitioner has been compelled to make up from other sources the difference between the actual and reasonable cash cost to the company of such permanent extensions and additions to its property and 75 per cent thereof, and, further, that the bonds of petitioner issued under the terms of said trust deed have been sold at prices ranging from 93 to 94. The petition alleges "that in making up said difference between 75 per cent and the actual cash cost of said permanent extensions and additions of and to its plants, properties and equipment, and the bond discount hereinabove referred to, your petitioner has been compelled to incur and has incurred a large floating indebtedness, which said floating indebtedness at this date amounts to the sum of \$635,432.65," which amount petitioner alleges has been expended for permanent additions and extensions to its plants, properties, and systems, and for bond discount over and above the amount of money realized by petitioner from the sale of its bonds. The petition then continues as follows:

"That in order to provide a means for financing the said difference between the price at which bonds can be issued and the actual cost of the permanent extensions and additions, and to cover bond discount, the board of directors of your petitioner deem it advisable to provide for an issue of 6 per cent debenture bonds."

The directors thereupon authorized the execution to Continental and Commercial Trust and Savings Bank and Frank H. Jones, as trustees, of an indenture to be dated as of December 1, 1912, providing the terms and conditions upon which debenture bonds in the total amount of three million dollars, bearing interest at the rate of 6 per cent per



annum. are to be issued from time to time for the purpose hereinbefore indicated. Application is now made for authority to issue bonds of the face value of five hundred thousand dollars (\$500,000) of this proposed issue.

An examination into the facts shows that applicant is not entitled to any issue of bonds on the theory thus stated by it. Since December 31, 1908, applicant has expended in permanent extensions and additions to its property an amount which it alleges to be \$2,839,547. During the same period it has sold bonds of the face value of \$1,775,000, from the sale whereof it has derived the sum of \$1,637,750. The difference between the construction cost and the cash derived from the sale of its bonds is \$1,201,797. Applicant desires also to issue debenture bonds against certain items of personal property, such as wagons and horses, totaling \$92,764, which items are not covered by the first mortgage. By adding these two amounts we derive the total of \$1,294,561. It seems, however, that applicant has derived from the sale of its capital stock since December 31, 1908, the amount of \$1,376,000, so that it has already by the sale of its capital stock made up more than the amount which it has failed to secure from the sale of its bonds delivered to it by its trustees. If applicant is entitled to issue the debenture bonds now applied for, it must accordingly be on some other theory.

At the hearing applicant relied on a statement of capital expenditures from December 31, 1908, to November 30, 1912, and all moneys derived from the sale of bonds and the sale of stock during the same period. According to this statement, applicant has added to its capital expenditures since December 31, 1908, a total of \$3,837,774.53. During the same period it has derived from the sale of bonds the sum of \$1,637,750, and from the sale of stock \$1,376,000, making a total of \$3,013,750, and leaving an excess of capital expenditures over proceeds from securities from December 31, 1908, to November 30, 1912, of \$824,024.53. At the hearing applicant stated that it desired to issue its debenture bonds against a portion of this amount.

I desire now to draw attention to the following items which are included in the total of \$824,024.53:

|   |              |
|---|--------------|
| Bond discount, March, 1909.....   | \$1,245 00   |
| Redemption premium on first and refunding mortgage bonds,<br>May, 1909 .....  | 30,000 00    |
| Expenses in connection with municipal ownership campaign,<br>August to November, 1910.....  | 12,520 84    |
| Irrigation investigation expenses and services of Lovell,<br>engineer, January, 1911.....   | 3,695 26     |
| Bond discount .....   | 303,859 04   |
| Securities owned, consisting of shares of stock in Clyde Jack-<br>son Oil Company and San Diego-Panama-California<br>Exposition and bonds of the University Club of San Diego | 16,300 00    |
| Warner's Ranch power investigation.....   | 29,374 63    |
|   | <hr/>        |
|   | \$396,994 77 |

In my opinion, none of these items are properly capitalizable. If a bond discount were capitalized by the issue of other bonds, the amount of bonds outstanding in any case in which the original bonds were sold at a discount would manifestly be in excess of the value of the property, a thing which this Commission will not permit. The expenses incurred in a municipal ownership campaign are not properly chargeable to capital account. Nothing has so far come of the investigation made by Lovell or the Warner's Ranch power investigation. These items should certainly be held in suspense until they actually add to the value of applicant's property. The securities owned by applicant, as hereinabove outlined, also are not proper subjects for capitalization.

In reaching this conclusion I am making no investigation into the construction expenditures as reported by applicant, amounting to \$2,932,311.71, and am also passing over several items as to which, though they are questionable, I am not prepared to say that they are not proper subjects for capitalization. By deducting the items hereinbefore specified from the sum of \$824,024.53, there remains the sum of \$427,029.76. From this amount should be subtracted the proceeds to be derived from the sale of \$204,000, face value, of first mortgage bonds, the issue whereof was authorized by this Commission in Application No. 378, by its order dated the eleventh day of February, 1913. These bonds were to be sold in part at 94 and in part at 95. The sale thereof would yield an amount in excess of \$190,000, thus leaving a total in excess of \$237,000 falling within this theory of applicant.

It becomes necessary now to refer to an extra dividend declared by applicant in 1912. Applicant's entire capital stock, with the exception of a few shares nominally in the hands of individuals for the purpose of qualifying them as directors, is owned by the Standard Gas and Electric Company, which company in turn is owned by H. M. Byllesby & Company. During the year 1912 applicant declared a regular dividend of 7 per cent on all its outstanding stock, both preferred and common. In addition thereto, applicant on January 30, 1912, authorized a special dividend of \$147,000, and on July 1, 1912, another special dividend of \$108,600, making a total of \$255,600, which was paid by applicant in the year 1912 as special dividends. It should also be borne in mind in this connection, that in February, 1912, the board of directors exercised their prerogative in regard to calling in the preferred stock, amounting at that time to \$1,800,000. The articles of incorporation provide that the dividend on preferred stock should not exceed 7 per cent, and that it might be called in at any time at not more than 110. As no other securities have been issued to take the place of the preferred stock, it is not quite clear as to why the preferred

stock was called in at a premium of \$10 per share. If the preferred stock had not been called in, a special dividend for the year amounting to more than 27 per cent could have been declared. This dividend would have included accumulated earnings covering several years of operation. The dividend as declared was paid to Standard Gas and Electric Company, which company is applicant's largest creditor and also the owner of practically its entire capital stock. Applicant's business is increasing tremendously and the need for new funds to construct extensions is a pressing one. Why, under these circumstances, funds in the treasury to the amount of \$255,600—which funds might have been used to cover the difference between the cost of the new extension and the price received from the sale of first mortgage bonds issued against the same—were paid in the shape of dividends instead of being kept in the treasury to meet the company's obligations, is not quite clear to me. In case the applicant had confined itself to its regular 7 per cent dividend there would now be available \$255,600 to meet its obligations, and the amount of debenture bonds or other securities for the issue of which applicant asks authorization, could be reduced by that amount.

At the hearing applicant filed a statement of the obligations which it desires to refund, as follows:

|  |                     |
|--|---------------------|
| Due Standard Gas and Electric Company.....               | \$401,500 00        |
| Due to four San Diego banks which loaned \$25,000 each.. | 100,000 00          |
| Due to C. C. Moore & Company.....                        | 8,533 35            |
| Due to General Electric Company.....                     | 36,511 82           |
| Accounts payable .....                                   | 163,152 92          |
| <b>Total .....</b>                                       | <b>\$709,698 09</b> |

From the proceeds of the \$204,000 first mortgage bonds, which bonds have now been authorized by this Commission, applicant can pay these obligations in excess of \$190,000, including all the accounts payable. Of the amounts due to C. C. Moore & Company, two sums of \$2,844.45 each are overdue, and have doubtlessly been paid. The four notes held by the San Diego banks are each due on March 18, 1913. In view of the fact that applicant had in its treasury \$255,600 which it might have used to pay off its obligations to that extent to its owner, the Standard Gas and Electric Company, but voluntarily chose to pay that amount to the Standard Gas and Electric Company in the shape of an extra dividend, I am not willing to recommend the issue of debenture bonds to cover this amount in so far as it represents moneys due to the Standard Gas and Electric Company. It will be noted that the entire surplus of proper capital expenditures over receipts from the sale of securities is less than \$237,000, whereas \$255,600 were paid out as an extra dividend. Nevertheless, the sum of \$237,000 or thereabouts includes the four notes due on the eighteenth of this month to the four San Diego banks. While a strict policy might demand, in

view of the declaration of the special dividend, in excess of the sum of \$237,000, that no debenture bonds be authorized at the present time, I am willing to recommend that the effect of such a conclusion be limited to the moneys now due to the Standard Gas and Electric Company, and that the debenture bonds sufficient to pay the amounts now due to the four San Diego banks be issued. Applicant is of the opinion that its debenture bonds will sell for 95 or over. If they sell for 95, the net result of the transaction will be, that for a short-term obligation of \$100,000 at 6 per cent, there will be substituted a ten year obligation for some \$106,000 at 6 per cent. It will be noted that the amount of applicant's indebtedness will thereby be increased, and the margin between the value of its property and the total of its outstanding indebtedness thereby decreased. Applicant considers that the value of the physical portions of its plant is some five million dollars. The amount of bonds and other obligations now outstanding is some \$4,229,000. While the margin thus appearing is sufficient to justify the issue of the debenture bonds hereby authorized, it is evident that applicant will shortly have to resort to some method of financing other than the issue of bonds alone. Applicant is now in such a flourishing financial condition that it ought to be able to increase its margin between the value of its property and its outstanding obligations by the issue of additional stock or by deferring for a time its dividends. Attention is drawn to these matters so that the utilities of the State may clearly realize the Commission's attitude with reference to the issue of debenture bonds to cover the difference between the cost of additions and extensions and the proceeds realized from the sale of securities, which often can be issued only up to a certain percentage of the cost of new property and extensions. The applicant in this case for every one dollar of new construction receives from the trustees bonds of the face value of 75 cents. If these bonds are sold at 95, applicant will derive therefrom  $71\frac{1}{4}$  cents. If applicant then desires to issue debenture bonds for the difference between the value of the property and the amount realized from the sale of the bonds, and if these debenture bonds will be sold at 95, it will have to issue some  $30\frac{1}{4}$  cents of debenture bonds to make up the difference. There will accordingly be outstanding against one dollar of additional property 75 cents of first mortgage bonds and  $30\frac{1}{4}$  cents of debenture bonds, making a total of  $\$1.05\frac{1}{4}$  bonds against \$1.00 worth of property. This Commission, of course, will not authorize such an amount of obligations unless the entire amount of obligations outstanding is considerably less than the entire value of the property. It is clear that in ordinary cases it will not be long before an issue of \$1.05 worth of obligations against \$1.00 worth of new property will eat up the entire existing margin between the outstanding obligations and the percentage of the value of the

property to which this Commission can safely authorize a public utility to issue bonds or other outstanding obligations.

I find that the moneys to be derived from the sale of the debenture bonds hereby authorized are not reasonably chargeable to operating expenses or to income, and recommend the following form of order:

**ORDER.**

San Diego Consolidated Gas and Electric Company having applied to the Railroad Commission of the State of California for the consent of the Commission to the issuance of debenture bonds by said company to the amount of five hundred thousand (\$500,000) dollars, face value, said bonds to be payable on the first day of December, 1922, unless sooner redeemed, and to bear interest at the rate of six (6) per cent per annum, payable semiannually, under and in pursuance of the terms of an indenture to Continental and Commercial Trust and Savings Bank and Frank H. Jones, trustees, to be dated as of the first of December, 1912, which indenture applicant asks authority to execute and deliver, and a public hearing having been held upon said application, and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the discharge and lawful refunding of obligations, as will hereinafter appear in greater detail, and that said purpose is not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* as follows:

1. San Diego Consolidated Gas and Electric Company is hereby authorized to execute and deliver to Continental and Commercial Trust and Savings Bank and Frank H. Jones, as trustees, its certain indenture to be dated as of the first day of December, 1912, providing the terms and conditions upon which debenture bonds of a possible total issue of three million dollars are to be issued, and the rights and security of the holders thereof, substantially in the form attached to the application in this case, and designated Schedule No. 2.

San Diego Gas and Electric Company shall file with this Commission after execution a certified copy of said indenture as executed. Said Company, however, shall have no right or authority to issue any bonds pursuant to the terms of said indenture except as hereafter authorized by the Railroad Commission.

2. San Diego Consolidated Gas and Electric Company is hereby authorized to issue \$106,000, face value, of principal of bonds of said company, or so much thereof as may be necessary for the purposes hereinafter stated, maturing the first day of December, 1922, unless sooner redeemed, said bonds to be numbered one (1) to one hundred and five (105), inclusive, redeemable on any interest payment date prior to maturity by payment to the trustees of the principal sum and a

premium of one (1) per cent of such principal sum and the accrued interest then unpaid thereon, and to bear interest at six (6) per cent per annum, payable semiannually, on the first day of June and the first day of December in each and every year until the payment of the principal sum, under and in pursuance of the terms of the indenture hereby approved to be made and executed by said San Diego Consolidated Gas and Electric Company to Continental and Commercial Trust and Savings Bank and Frank H. Jones, as trustees, upon the following conditions and not otherwise, to wit:

(a) San Diego Consolidated Gas and Electric Company shall sell said bonds hereby authorized so as to net the said company not less than 95 per cent of the face value of the principal thereof, beside interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used only for the discharge or refunding of obligations of the company heretofore incurred for purposes properly chargeable to capital account and evidenced by the four following promissory notes:

|   |             |
|---|-------------|
| 1. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable March 18, 1913, to the order of American National Bank of San Diego----- | \$25,000 00 |
| 2. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable March 18, 1913, to the order of Merchants' National Bank-----            | 25,000 00   |
| 3. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable March 18, 1913, to the order of the First National Bank-----             | 25,000 00   |
| 4. Promissory note of San Diego Consolidated Gas and Electric Company dated November 18, 1912, payable March 18, 1913, to the order of Bank of Commerce and Trust Company-----  | 25,000 00   |

3. San Diego Consolidated Gas and Electric Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Railroad Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

4. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of March, 1913.

Decisions Nos. 492 and 493, grade crossings; not printed. See end of volume.

DECISION No. 494.

IN THE MATTER OF THE APPLICATION OF POMONA VALLEY TELEPHONE AND TELEGRAPH UNION FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF ONE HUNDRED THOUSAND DOLLARS.

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Application No. 400.

*Decided March 11, 1913.*

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Applicant given permission to execute a trust deed securing an issue of \$200,000 six per cent twenty-five year bonds, and to issue presently \$100,000 of said bonds, to be used for extensions and betterments and the discharge of obligations. The bonds are to be issued at par. Applicant's favorable financial condition commented upon.

*Nichols & Pitzer*, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application for authority to issue bonds of the face value of \$100,000 for the purposes hereinafter specified.

The applicant corporation was incorporated in September, 1902, and is one of the so-called independent telephone companies. It started its business within the city of Pomona, and thereafter extended its service to the adjoining cities or towns of Chino, Claremont, Lordsburg, and San Dimas, in competition with The Pacific States Telephone and Telegraph Company. After several years of competition, the latter company retired from the field, so that the applicant herein is left in the exclusive possession of the local field in the territory served by it. The applicant has long distance connections with The Pacific Telephone and Telegraph Company and the United States Long Distance Telephone and Telegraph Company.

Applicant's authorized capital stock consists of \$100,000, divided into 20,000 shares of the par value of \$5.00 each. All this stock has been issued for cash at par or a little more than par. On February 1, 1904, applicant issued bonds of the face value of \$20,000, bearing interest at the rate of 6 per cent per annum. Of the bonds so issued, bonds of the face value of \$10,000 have been redeemed, leaving \$10,000 now outstanding. Applicant also has outstanding coupon notes of the face value of \$40,500, other bills payable amounting to \$18,500 and open account bills amounting to \$6,837.

The original cost of applicant's plant, apart from real estate, fixtures and tools was \$251,123.30. Applicant has from time to time charged

off various items for depreciation, and considers this property to be worth at the present time \$155,982.30. In addition thereto, applicant owns real estate in the cities of Pomona, Chino and Lordsburg, valued at \$15,000, fixtures which cost \$4,600, and tools estimated at \$200. Applicant estimates the present value of its entire property as \$179,782.30 or thereabouts. No amounts have been charged to capital account for superintendence and engineering on construction work.

In the year 1912, applicant met all its obligations, including interest, paid a dividend of \$2,249.57, earned \$3,000 for another dividend, and increased its account, called profit and loss, on account of depreciation of plant more than \$14,000.

Applicant now asks authority to issue 6 per cent bonds of the face value of \$100,000, and to execute a trust deed or mortgage on its property to secure the same, for the following purposes:

|  |              |
|--|--------------|
| To retire outstanding bonds of the issue of 1904.....                                | \$10,000 00  |
| To retire coupon notes .....   | 40,500 00    |
| To meet other bills payable.....   | 18,500 00    |
| To pay open accounts.....  | 6,837 00     |
| To purchase a lot in San Dimas and to erect thereon a building<br>and equipment..... | 4,000 00     |
| To extend and improve its system.....  | 20,163 00    |
| Total .....  | \$100,000 00 |

The coupon notes are for five hundred (\$500) dollars each, and will become due from time to time up to about the middle of the year 1916. Applicant expects to be able to exchange bonds of the new issue for many of these notes, and to use the proceeds from the sale of other bonds of the proposed issue to retire the other notes as they become due. Applicant expects to sell all its bonds at par. This is a condition very pleasing to the Commission and is made possible by the fact that there is no water at all in the capital, and that the affairs of the company have been conducted with prudence and ability. Applicant has hitherto sold all its stock and bonds for cash at par, a very refreshing condition which I hope will become more prevalent as the public secures more confidence in the securities of public utilities in this State, and as this Commission gradually approaches the realization of its aims in the matter of public utilities securities. As the coupon notes bear 7 per cent interest and the bonds will bear 6 per cent, it is evident that applicant will improve its financial condition by issuing the bonds for which application is now made to this Commission. The other bills payable which it is proposed to refund likewise bear interest at the rate of 7 per cent. The open account items are for material which went into capital account. The item of \$20,163 is to provide funds to extend and improve applicant's system during the next year or thereabouts. Applicant has a normal increase of five



hundred telephones per year and a capitalization of forty (\$40) dollars or thereabouts per telephone, an unusually low amount. Applicant accordingly expects to utilize about \$20,000 for new construction and improvements during the next year or so. I find this amount to be reasonable. I find that none of the purposes for which applicant desires to issue bonds are properly chargeable to operating expenses or to income.

I desire to say in conclusion that it has been a pleasant and refreshing task to investigate the applicant's affairs in connection with this application. Applicant furnishes a striking example of what a public utility can accomplish in this State, under good management, without a single dollar of bonus stock or discount on bonds or inflated capital.

I recommend that the application be granted, and submit herewith the following form of order:

**ORDER.**

Pomona Valley Telephone and Telegraph Union having applied to the Railroad Commission of the State of California for an order of the Commission authorizing the issuance by said company of bonds to the amount of one hundred thousand (\$100,000) dollars, face value, said bonds to be payable on the first day of March, 1938, and to bear interest at the rate of six (6) per cent per annum, payable semi-annually, and secured by a mortgage or deed of trust upon all the property of the company, and also for an order authorizing the execution and issue by said company of said mortgage or deed of trust, and a hearing having been held upon said application, and the Commission finding that the money to be procured by the issue of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of facilities and the discharge and lawful refunding of obligations, and that the purposes for which said money is to be expended are not in whole or in part reasonably chargeable to operating expenses or to income.

*It is hereby ordered* as follows:

1. Pomona Valley Telephone and Telegraph Union is hereby authorized to execute and deliver mortgage or trust deed to Title Insurance and Trust Company, to be dated as of the first day of March, 1913, and to secure a possible issue of two hundred thousand (\$200,000) dollars of bonds, said bonds to bear interest at the rate of six (6) per cent per annum, payable semiannually, upon the terms and conditions in said mortgage or deed of trust set forth and contained, said mortgage or deed of trust to be substantially in the form of Exhibit "C," attached to the petition in this proceeding. Upon the execution thereof, applicant shall file with this Commission a certified copy of said

mortgage or deed of trust as executed. Said company, however, shall have no right or authority to issue any bonds pursuant to the terms of said indenture except as hereafter authorized by the Railroad Commission.

2. Pomona Valley Telephone and Telegraph Union is hereby authorized to issue one hundred thousand (\$100,000) dollars, face value, of principal of bonds of said company, maturing the first day of March, 1938, bearing interest at the rate of six (6) per cent per annum, payable semiannually on the first day of September and the first day of March of each year until the final payment of said bonds, under and in pursuance of the terms of the mortgage or trust deed heretofore in section 1 of this order authorized to be issued, on the following conditions and not otherwise, to wit:

(a) Pomona Valley Telephone and Telegraph Union shall sell said bonds so as to net said company not less than par;

(b) The proceeds from the issue of said bonds shall be applied only to the following purposes, that is to say:

|   |             |
|---|-------------|
| 1. To retire the outstanding bonds of the issue of 1904, bonds of the face value of-----  | \$10,000 00 |
| 2. To retire the outstanding coupon notes, bonds of the face value of-----  | 40,500 00   |
| 3. To meet the company's other outstanding bills payable, as specified in the application on file with this Commission, bonds of the face value of-----   | 18,500 00   |
| 4. To pay the company's open accounts, as specified in its application on file with this Commission, bonds of the face value of-----  | 6,837 00    |
| 5. To purchase real property in San Dimas and to erect thereon a suitable building for telephone use and to install therein a switchboard and other necessary equipment and extensions, bonds of the face value of----- | 4,000 00    |
| 6. To construct, extend and improve its facilities, bonds of the face value of-----   | 20,163 00   |

3. Pomona Valley Telephone and Telegraph Union shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

4. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the twenty-eighth day of February, 1914. If any of the bonds hereby authorized to be issued for the purpose of discharging outstanding obligations have not been

utilized for that purpose on February 28, 1914, applicant may apply to this Commission for an extension of the time limit herein specified.

The foregoing opinion and order are hereby approved, and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of March, 1913.

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DECISION No. 495.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR AUTHORITY TO ISSUE ITS FIRST MORTGAGE FIVE PER CENT SINKING FUND FORTY-YEAR GOLD BONDS TO AN AMOUNT OF THE FACE VALUE OF PRINCIPAL OF SUCH BONDS SUFFICIENT AT THE PRICE AT WHICH SAID BONDS MAY BE SOLD TO NET THREE MILLION, NINE HUNDRED SEVENTY-ONE THOUSAND SEVEN HUNDRED AND THIRTY-ONE DOLLARS.

Application No. 357.

*Decided March 11, 1913.*

Applicant is engaged in transmitting and selling electrical energy generated at a hydroelectric station at Big Bend and at steam-driven generating stations in Oakland and San Francisco. In preparation for the development of electrical energy it has invested large sums of money which it is not now using but claims that this over-development was economical because, eventually, it should be made, and to make it at this time would result in a saving over a development made from time to time only in proportion to the energy to be immediately used. It now proposes to build a dam which will impound water estimated capable of producing 500,000-horsepower of electrical energy, to immediately install a unit power plant which will produce 20,000 kilowatts, and to make additions and extensions to its present distribution facilities and service. For these and other purposes, including the reimbursement of moneys expended from income, and the discharge of certain indebtedness, application is made for approval of issue of 5 per cent first mortgage bonds to an amount sufficient, face value, if sold at 90, to realize proceeds in the amount of \$3,971,731. No inventory has ever been made of applicant's plant, nor would it be possible within any reasonable time to obtain such valuation. The Commission has not heretofore insisted upon an accurate valuation of existing property for purposes of deciding bond applications, being contented with a determination as to whether or not the entire outstanding indebtedness bears an improper relationship to the approximate value of the property to be disclosed by the proceedings. Or, in those cases where the outstanding bonded indebtedness is in excess of what would be permitted, if the corporate affairs had been under the Commission's jurisdiction from the beginning of the enterprise, the Commission has sought to

determine whether the proposed issue would place the enterprise in a better financial condition than it occupied before the issue was authorized. The Commission has, however, held that no additional bonded indebtedness would be allowed to an enterprise considered to be practically insolvent. In previous cases the relationship which might exist between the assumed reproduction value of the property and the outstanding obligations have been considered.

*Held*, There is no reason why the placing of an enterprise in a better condition, with respect to its efficiency, should not likewise be given consideration, particularly if its efficiency is increased in a greater ratio by the expenditure of a certain amount of money than such expenditure increases its outstanding indebtedness. Each case is decided on its own facts. In this case, by the expenditure of the money which may be derived from the sale of these additional bonds, even having regard to the face of such bonds, which will be in excess of the amount to be realized from their sale, the efficiency of the plant of this company will be increased in a much greater proportion than is its bonded indebtedness; that there will be greater security behind not only the additional bonded indebtedness herein authorized, but behind the bonded indebtedness already outstanding; that applicant will be very much better off financially, and its obligation have a greater value behind it by the granting of this application than now exists.

*Held*, As the bonds are to be sold at 90, there will be 10 per cent less of property produced than face value of bonds. This 10 per cent should be amortized or made up out of earnings within a period of not more than ten years. In view of the fact that the tremendous importance to the public and all concerned of the absolute stability of a dam which will be called upon to impound and hold back the enormous quantities of water to be produced at the Big Meadows reservoir, and in view of the fact that applicant has voluntarily proposed a change in the type of dam from that heretofore intended to the well-known, established, and time-tried gravity section dam, even though this will largely increase the cost.

*Held*, That the increase in the cost, as shown by the amended estimates as filed by officers of applicant, be allowed. Applicant authorized to issue \$4,411,000 face value of bonds, to be sold at the minimum of 90, or so much thereof as may be found necessary for the purposes set forth in the order.

*Guy C. Earl and Chaffee E. Hall*, for Applicant.

#### REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application by Great Western Power Company for an order authorizing the issue of first mortgage five per cent sinking fund forty-year gold bonds, in denominations of \$1,000, or a multiple thereof, in an amount of the face value of principal of such bonds sufficient at the price at which said bonds may be sold (such price to be not less than 90 per cent of the face value thereof as fixed in the first mortgage or deed of trust under which said bonds are to be issued) to net applicant the sum of \$3,971,731.

The financial condition of applicant is as follows:

| <i>Stock.</i>         |       |                 |
|-----------------------|-------|-----------------|
| Common                | ----- |                 |
|                       |       | Authorized.     |
|                       |       | Issued.         |
| Bonds.                | ----- | \$27,500,000 00 |
|                       |       | \$27,500,000 00 |
|                       |       | \$25,000,000 00 |
|                       |       | \$20,366,000 00 |
| Floating indebtedness | ----- | \$620,561 34    |

Applicant is a corporation organized under the laws of the State of California, and since 1907 has been engaged in the business of generating, transmitting and selling electric energy for light, heat and power. Its system now in actual operation consists of a hydroelectric power plant of 40,000 kilowatt capacity, situated on the North Fork of the Feather River at Big Bend, Butte County; a steel tower transmission line extending from Big Bend to Oakland; transmission cables under the waters of the straits of Carquinez and the bay of San Francisco; high tension substations at Brighton, Sacramento County, Isleton, Sacramento County, Clayton and Cowell in Contra Costa County, and Oakland, Alameda County, California; and approximately 504 miles of distribution lines in the counties of Placer, Sacramento, Solano, Contra Costa, Alameda, Napa, and Sonoma, and in the cities and towns in said counties, together with the necessary and proper substations, transformers, and other electrical equipment used in connection with said distribution lines. In the city of Oakland applicant is operating a steam generating station of 10,500 kilowatt capacity. This steam plant is owned by the California Electric Generating Company, a corporation, but the stock control is held by applicant, all the common stock except qualifying shares held by the directors being owned by applicant. From Oakland a cable beneath the waters of San Francisco Bay transmits current from the Oakland substation to San Francisco, where it is fed into the lines of the City Electric Company, a corporation, and all but 20 of the 50,000 shares of capital stock of the latter corporation are owned by applicant.

Said City Electric Company also owns and operates in San Francisco a steam generating plant, having a boiler capacity of 15,000 kilowatts, and generator capacity of 21,000 kilowatts, and distributes current over 60 miles of aerial and underground lines.

Applicant is selling and delivering, approximately, 17,500,000 kilowatt hours of electric energy per month to upwards of 7,600 consumers in the above-mentioned counties and the cities and towns thereof, and in addition it is selling and supplying through the City Electric Company, 5,000,000 kilowatt hours to approximately 3,300 consumers in the city and county of San Francisco.

It is stated in the application, and this was supported by evidence introduced at the hearing, that a part of the system belonging to applicant was acquired from other corporations and that the original cost of these properties cannot be ascertained. The testimony was to the effect that the cost of its properties to applicant aggregated on December 1, 1912, \$47,375,594.65, which sum is made up as follows: \$14,640,682.15 was paid for construction, \$25,000,000 in stocks and \$1,333,000 in bonds of applicant for the Big Meadows properties, \$151,912.50 cash, \$2,500,000 stocks and \$3,750,000 bonds of applicant

was paid for the capital stock of the City Electric Company and the California Electric Generating Company.

Applicant shows that in addition to its properties now in operation, it owns lands and water rights on the North Fork of the Feather River, between Big Bend and Big Meadows, Plumas County, which applicant claims because of their location in a region of great rainfall and because the configuration of the land makes high drops available for power development by the construction of comparatively short tunnels, are of great value. Applicant also owns all but about 4,000 acres of the total area of Big Meadows, a natural reservoir site covering an area of 45 square miles. Applicant states that it is the ultimate plan and purpose to develop all of its properties and apply the same to the generation of hydroelectric energy and to the irrigation of the lands of the Sacramento Valley; that it now has under way a great dam at Big Meadows, which will impound the waters of the Feather River in the Big Meadows reservoirs; and that it has commenced at the power house at Big Bend, the construction and installation of electrical units aggregating 22,000 kilowatts, in addition to the units already there installed. It appears that applicant intends eventually, by the installation of four additional power houses, to use the waters of the Feather River between Big Bend and Big Meadows to generate hydroelectric energy up to approximately 500,000 electrical horsepower. As showing a resulting public benefit of this development, applicant urges that the impounding of the waters of the North Fork of the Feather River and the utilization thereof for the generation of electricity will equalize the flow of said river, thereby increasing the navigability of the Sacramento River (into which the Feather River flows), eliminating the devastating effects of flood waters, and making said waters available for irrigation during the dry season. Applicant proposes that after using the waters at its power houses, to convey said waters to the Sacramento Valley and distribute the same over a large area of semi-arid land.

Applicant admits that it has invested large sums of money in preparation for the development of electrical energy, which it is not now using, but the claim is made that this over-development was economical because, eventually, it should be made, and to make it at this time would result in a saving over a development made from time to time only in proportion to the energy to be immediately used. The language in the application describing this condition, and which was supported by evidence at the hearing, is as follows:

“That a large proportion of the cost of the properties of your applicant, that is to say, the Big Meadows lands, a large part of the lands and water rights on the North Fork of the Feather River between Big Bend and Big Meadows, approximately fifty

per cent of the concrete lined tunnel through the mountain at Big Bend, and a considerable portion of the present intake tower, header and power house at Big Bend, are foundation expenses; that is to say, a very great part of the cost of your applicant's properties thus far was incurred for the ultimate development of five hundred thousand electrical horsepower, and would have been unnecessary and would not have been incurred if the present development at Big Bend were the only one contemplated. That the entire development can be completed and placed in operation at a much smaller cost per unit than the present installation, since the aforesaid foundation expenses will be divided proportionately between the present and future installation, thus reducing ultimately the unit cost per horsepower to approximately one hundred dollars \* \* \*. That a large proportion of the power facilities which your applicant owns, and is in possession of, in the Feather River watershed is as yet unimproved. That, for instance, by expending money for the completion of the Big Meadows reservoir and dam, the properties and the assets of your applicant at Big Meadows will be enormously enhanced in value, and will be changed from inert and inactive and practically unproductive assets and properties to active and productive properties. In other words, there will be a creation and generation of wealth and value by the expenditure, for the purpose of completing the reservoir and dam at Big Meadows, of the moneys to be realized from selling of its bonds, and for the additions of the units 5 and 6 at the power house at Big Bend, and for that reason your applicant respectfully calls the attention of the Commission to the fact that your petitioner's financial condition will be greatly benefited by your petitioner being granted the right hereby prayed for to sell its bonds for the purpose of raising moneys to be expended in the manner herein indicated, and your petitioner further respectfully calls the attention of the Commission to the fact that by making the expenditures upon the said inert and inactive properties, etc., the security of the existing holders of the bonds of your applicant, as well as those who will become the holders of the bonds, which your petitioner hereby asks leave to sell, will be very greatly increased and strengthened, and the equity in the property will be enormously augmented over the existing equity."

That the contention of applicant that the so-called foundation development was economical, I am disposed to agree. There can be no doubt that eventually there will be an absorption of the power possible of development by this company, and it seems reasonable to conclude that at the time of making expenditures in obtaining necessary lands for reservoir purposes and the building of a proper dam and other permanent structures future inevitable development should be prepared for.

No inventory or itemized valuation has ever been made of the plant of the applicant, and it would be impossible within any reasonable time to obtain such valuation. We have not, however, heretofore insisted upon an accurate valuation of existing property for purposes of deciding bond applications, contenting ourselves with a determination as to whether or not the entire outstanding indebtedness bears an improper relationship to what we can find from the evidence the approximate value of the property to be when viewed as a whole. Or, in those cases where the outstanding bonded indebtedness is in excess of what we would permit, if its affairs had been under our jurisdiction from the beginning of the enterprise we have sought to determine whether the proposed issue would place the enterprise in a better financial condition than it occupied before the issue was authorized. We have, however, held that no additional bonded indebtedness would be allowed to an enterprise which we considered to be practically insolvent. To be sure we have heretofore been considering the general relationship between the value of the property as a whole without regard to its efficiency and the outstanding bonded indebtedness. In the previous cases we have considered the relationship which might exist between the assumed reproduction value of the property and the outstanding obligations. I see no reason, however, why the placing of an enterprise in a better condition with respect to its efficiency should not likewise be given consideration, particularly if its efficiency is increased in a greater ratio by the expenditure of a certain amount of money than such expenditure increases its outstanding indebtedness. We have decided each case on its own facts, and on the facts in this case I am of the opinion that by the expenditure of the money which may be derived from the sale of these additional bonds, even having regard to the face of such bonds, which will be in excess of the amount to be realized from their sale, the efficiency of the plant of this company will be increased in a much greater proportion than is its bonded indebtedness. To illustrate this condition concretely, let us consider the case where in a hydroelectrical enterprise excessive dams have been built and one unit for power purposes installed. Let us assume that the cost of the dam is equal to the cost of constructing the necessary facilities for producing three units of the size of the one already installed, then to produce the first unit we will have an entire expense four times as great as will be necessary to duplicate the capacity of the plant by the addition of the second unit, and likewise the third and fourth. The Commission should not be understood as laying down a general rule, but in this specific case I am of the opinion that by the expenditure of the money to be derived from the bond issue applied for, there will be greater security behind not only the additional



bonded indebtedness herein authorized, but behind the bonded indebtedness already outstanding. In other words, in my opinion, from the facts presented in the evidence in this case, the applicant will be very much better off financially, and its obligation have a greater actual value behind it, by the granting of this application than now exists.

It is proposed to build a dam which will impound water estimated capable of producing 500,000-horsepower of electrical energy. There will be immediately installed a unit power plant, which will produce 20,000 kilowatts, and distribution facilities in the amount of \$709,195 and \$362,602 improvements to service.

The purposes stated in the application for which the money to be derived from the sale of these bonds is to be expended are as follows:

- |  |              |
|--|--------------|
| (a) Extensions for revenue, including construction of distribution lines and of service connections to consumers in the counties of Alameda, Contra Costa, Sacramento, Solano, Sonoma, and Napa and in the cities and towns of San Lorenzo, Oakland, Berkeley, Oak Park, Sacramento, Sebastopol, Napa Junction, Suisun, Fairfield, Napa, Santa Rosa, and Dixon.....  | \$709,195 00 |
| (b) Improvements to service, including construction of 15 miles of 100-kilovolt transmission lines from Moraga Valley to the south side of Carquinez Straits, a substation at the Carquinez end of said line; a 22,000-volt tie line between Valona and Richmond; transformer sets at Richmond; six miles of secondary circuit on Richmond feeder; primary extensions and transformers at Oakland; regulators with line drop compensators at Oakland substation; an additional armored cable beneath the waters of San Francisco Bay; an auxiliary 22-kilovolt line from Napa to Santa Rosa; a second 22-kilovolt circuit from Carquinez Straits to Napa; and an additional 22-kilovolt armored cable beneath the waters of Carquinez Straits; a synchronous condenser at Oakland; and the installation of a 4,000-kilowatt motor generator set at Fruitvale.... | 362,602 00   |
| (c) Extensions Big Bend power house by completing installation of units 5 and 6, including the purchase and installation of such electrical apparatus not now in place as will increase the capacity of Big Bend power house from 40,000 to 60,000 kilowatts. Of this construction work on the Big Bend extension, trenches for penstocks 5 and 6, and the pit for the substructure of the power house have been partially excavated, and the concrete work in the front and end walls for the ultimate power house extension up to an elevation of 473.5 has been completed. The cost of the work so far completed, as of December 1, 1912, has been \$155,661.34, all of which sum was expended subsequent to January 1, 1912.....   | 639,627 00   |
| (d) Completion Big Meadows dam and reservoir, including the cost of the completion of said dam now in course of construction of a type known as the gravity section.....   | 1,607,635 00 |
| (e) Acquisition of land in Big Meadows reservoir site, including land in the Big Meadows reservoir site not now owned by your applicant, and which your applicant estimates may be acquired for the aggregate sum set opposite this item.....  | 200,000 00   |
| (f) Other additions to property, including three 250-kilowatt transformers and additional switching equipment at Brighton substation; four 250-kilowatt transformers and feeder switchboard at Clayton substation; one 100-kilovolt switch at Cowell substation; sidewalks, street assessments and sewer assessment at Napa substation; Petaluma district warehouse, Petaluma garage building; equipment for permanent Napa district office; and a cable barge for use on San Francisco Bay.....   | 23,819 00    |

|  |  |              |
|--|--|--------------|
| (g) Reimbursement of moneys expended from income for the payment of interest on Big Meadows lands on "up-river" development, and on a part of development at Big Bend for period of 3½ years prior to December 31, 1912, interest on said lands and development during 1913 -----  |  | \$679,905 00 |
| (h) Reimbursement of moneys heretofore expended from income for purposes properly chargeable to capital account; payment of obligations heretofore incurred for additions to plant, etc., including the difference between the cost of certain additions to property and construction work acquired or performed during the months of September, October and November, 1912, and the amount of money derived from the sale of bonds on deposit with the trust company available for meeting the cost of such property and construction. That of said sum set opposite this item, a part has been paid by applicant from moneys derived from income, while a part remains due and unpaid----- |  | 280,783 00   |
| (i) Antioch substation -----   |  | 46,036 00    |
| (j) Sacramento substation -----  |  | 20,900 00    |
| (k) Balfour-Guthrie extension -----  |  | 16,200 00    |
| (l) Antioch Bowers, tie line -----   |  | 10,000 00    |
| (m) Antioch-Sherman Island tie line -----  |  | 9,000 00     |
| (n) Antioch-Nichols circuit -----  |  | 9,000 00     |
| (o) Island division extension -----  |  | 35,000 00    |

Item "g" may be at once eliminated from consideration because since the filing of this application, revised estimates of the cost of the Big Meadows dam have been filed with this Commission, which, because of a change in the type of dam proposed to be built, to the gravity section type, involve an expenditure of such an additional amount that, taken together with the other items, exclusive of item "g," for which money derived from the sale of these bonds is to be expended, will necessitate the use of practically all of the money derived from the sale of all of the bonds herein asked to be authorized.

Applicant claims total operating revenues for 1912, ending December 31st. of \$2,409,600.95 and a total net surplus of \$264,705.97, after deducting operating expenses, interest and other fixed charges. I am unable to find that this is a true surplus because of the fact that it does not appear that a proper depreciation reserve has been set up and maintained, and some of the items going to make up this claim of surplus are questionable from the standpoint of the Commission. However, I do find that there is sufficient total earning by applicant to carry its present obligations, and while the bonds herein asked to be issued will add to the burdens of applicant by some \$200,000 per year, the additional income which will in all probability result from the additional investment, will more than take care of this new burden. So that I find that there is every reasonable probability of the ability of applicant to carry its present and the proposed additional burden.

The trust deed under which applicant issues its bonds, provides that they shall be sold at not less than 90 per cent of their face value, and assuming that the bonds herein asked to be authorized were sold at that figure, there would be 10 per cent of the face of these bonds represented by discount, and manifestly the property purchased with

the money derived from the sale of these bonds would create the property against which it is proposed to issue these bonds. Hence, we will have 10 per cent less of property produced than face of bonds should the Commission grant this application.

This 10 per cent should be amortized or made up as soon as possible, and the officers of applicant have announced to the Commission that it is their policy to divert surplus income into property, rather than to pay dividends therewith, and I recommend that this policy be anchored and made certain by a condition in the order providing that this 10 per cent of bond discount shall be amortized or made up out of earnings within a period of not more than ten years.

Furthermore, in view of the fact that the tremendous importance to the public and all concerned of the absolute stability of a dam which will be called upon to impound and hold back the enormous quantities of water to be produced at the Big Meadows reservoir, and in view of the fact that applicant has voluntarily proposed a change in the type of dam from that heretofore intended, to the well-known, established, and time-tried gravity section dam, even though this will largely increase the cost, I recommend that the increase in the cost as shown by the amended estimates, as filed by officers of applicant, be allowed.

Applicant requests authorization to issue an amount of bonds of sufficient face value to produce the amount of money estimated to be necessary for the various purposes set out in the application. These estimates now amount to \$3,969,797, and if these bonds are sold at the minimum of 90 it would require \$4,411,000 face value of bonds to produce this amount. Hence, I recommend that applicant be authorized to issue \$4,411,000 face value of bonds, to be sold at the minimum of 90, or so much thereof as may be found necessary for the purposes set in the order.

I recommend that the application be granted, and submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by Great Western Power Company for an order authorizing the issue by said company of its first mortgage five per cent sinking fund 40-year gold bonds, to an amount of the face value of principal of said bonds, sufficient at the price at which said bonds may be sold, to net \$3,969,797.

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the discharge of its obligations, and the purchase, construction and acquisition of property, and that the purposes for which the proceeds of bonds

are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Great Western Power Company of not to exceed \$4,411,000 face value of first mortgage five per cent sinking fund 40-year gold bonds dated July 1, 1906, or so much thereof as may be necessary for the purposes set out herein.

Said bonds to be issued under and in pursuance of a mortgage and deed of trust dated July 1, 1906, executed by Great Western Power Company, to Bankers Trust Company of New York and James H. Wallace, trustee, a copy of which said mortgage and deed of trust is on file with the application herein, upon the following conditions, and not otherwise, to wit:

1. Great Western Power Company shall sell the bonds hereby authorized so as to net said company not less than 90 per cent of the face value thereof plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said bonds shall be used for the following purposes only:

|   |                |
|---|----------------|
| G. M. O., 01 to 031, extensions for revenue, Exhibit C-----   | \$709,195 00   |
| G. M. O., 0101 to 0113, improvements in service-----          | 362,602 00     |
| G. M. O., 0301 Big Bend extensions, Exhibit E-----            | 639,627 00     |
| G. M. O., 0201 to 0208, additions to property, Exhibit I----- | 23,819 00      |
| Antioch substation (a) -----                                  | 46,036 00      |
| Sacramento substation (a) -----                               | 20,900 00      |
| Balfour-Guthrie extension (a) -----                           | 16,200 00      |
| Antioch Bowers tie line (a) -----                             | 10,000 00      |
| Antioch-Sherman Island tie line (a) -----                     | 9,000 00       |
| Antioch-Nichols circuit (a) -----                             | 9,000 00       |
| Island Division extension (a) -----                           | 35,000 00      |
| Big Meadows dam (a) -----                                     | 1,607,635 00   |
| Land, Big Meadows reservoir-----                              | 200,000 00     |
| Capital charges, etc. (b)-----                                | 280,783 00     |
|   | <hr/>          |
|   | \$3,969,797 00 |

(a) Supplemental statement furnished subsequent to hearing.

(b) This was paid out of income. Desired to reimburse income to this amount with proceeds from bonds.

For a more particular description of the purposes for which the said money is to be used reference is had to the application, and all of the exhibits and statements attached and on file herein.

3. The Big Meadows dam shall be of some suitable gravity type, the plans and specifications for which shall be submitted to and receive the approval of the Commission before their final adoption by the company.

4. Should a general contract be let for the construction or superintendence of construction of said dam before the execution of such a contract, the same shall be submitted to and receive the approval of this Commission.

5. Each job or unit of work shall be made up on standard general manager's order forms (G. M. O.), copies of which shall be filed with the Commission; each general manager's order shall contain the detailed estimates for the cost of the work in the usual form. Monthly reports shall be filed with the Commission showing the expenditures during the month upon each general manager's order.

6. As a condition precedent to the effectiveness of this order, Great Western Power Company shall submit for the approval of the Commission, an agreement subject to amendment or change, on order of the Commission, running to the bondholders of said company, the original to be filed with the trustee under the mortgage and trust deed hereinbefore mentioned, which said agreement shall in effect provide that beginning with the year 1914, there shall be invested in the properties of said company, or in the retirement of its outstanding bonds, a sum of money each year which will be equal to one tenth of the amount represented by the discount on the bonds sold under this order, said money to be paid out of income or from sources other than receipts from the sales of securities.

7. Said company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom, and the use and application of such moneys.

8. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the first day of March, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of March, 1913.

## DECISION No. 496.

IN THE MATTER OF THE APPLICATION OF E. W. CROSBY  
TO SELL, AND OF THE REEDLEY TELEPHONE COM-  
PANY TO PURCHASE THE REEDLEY TELEPHONE  
EXCHANGE PLANT, AND TO ISSUE STOCKS IN PAY-  
MENT THEREFOR.

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Application No. 369.

*Decided March 11, 1913.*

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Reedley Telephone Company desires to purchase the Reedley Telephone Exchange from E. W. Crosby and to pay therefor the sum of \$10,000, which sum is to be derived from the sale of \$11,000 capital stock at par, the extra \$1,000 to cover the expense of organizing said Reedley Telephone Company and disposing of said shares of stock, any sum remaining over and above the expense necessary to dispose of the stock to be used for improvements.

*Held*, That the needs of the public will be subserved by the granting of this application.

*E. W. Crosby, in propria persona.*

*A. Terkel*, for Applicant.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This application is for permission on the part of E. W. Crosby of Reedley, California, for authority to sell the plant and property heretofore conducted by him under the name of Reedley Telephone Company to the Reedley Telephone Company, a corporation formed for the express purpose of taking over the plant and property involved and conducting the telephone business heretofore conducted by E. W. Crosby. Permission is also sought for the sale of 11,000 shares of capital stock of Reedley Telephone Company at \$1.00 per share.

E. W. Crosby is the present owner of the Reedley telephone exchange plant, and is a so-called sublicensee of The Pacific Telephone and Telegraph Company for the town of Reedley, and a radius of five miles from the center thereof. E. W. Crosby desires to sell, transfer, and assign all his right, title and interest in the said exchange, and such rights as he may hold as a so-called sublicensee in the territory involved, to the Reedley Telephone Company, a corporation duly organized under the laws of the State of California.

Reedley Telephone Company desires to purchase the Reedley telephone exchange from E. W. Crosby and to pay therefor the sum of \$10,000, which amount is to be derived from the sale of 11,000 shares

of stock of the par value of \$1.00 per share, said stock to be sold at par, the extra \$1,000 to cover the expense of organizing the said Reedley Telephone Company and disposing of said shares of stock, any sum remaining over and above the expense necessary to dispose of this stock to be used in providing such improvements and plant as may be found necessary at the time the Reedley Telephone Company is permitted to take possession, in so far as such amount so remaining may cover.

E. W. Crosby purchased the Reedley telephone exchange from The Pacific Telephone and Telegraph Company under date of August 1, 1911, at an agreed price of \$4,870, of which amount he had paid in cash to date of application \$2,600, leaving a balance due of \$2,270 which is covered by mortgage held by The Pacific Telephone and Telegraph Company. Since acquiring the plant, E. W. Crosby alleges that he has spent in additions and extensions the sum of \$5,390, \$2,000 of which amount was expended in constructing a thirty-mile toll lead and line to Dunlap and Squaw Valley, the balance being expended in the Reedley exchange property. In addition to the amount due to The Pacific Telephone and Telegraph Company, there are the following amounts owing by E. W. Crosby, all of which liabilities the Reedley Telephone Company desires permission to assume and pay from the proceeds of the sale of stock which it desires permission to issue: \$600 to the Kellogg Switchboard & Supply Co., San Francisco; \$65 to the Western Electric Company, San Francisco; \$125 to Western Lumber Company, Reedley; \$600 to the Reedley National Bank of Reedley; \$500 to the First National Bank of Reedley. E. W. Crosby is to turn the exchange over to the Reedley Telephone Company, on payment to him of \$5,500 cash, 280 shares of stock in the corporation, and the assumption by the corporation of the amounts owing by him as above specified.

I am of the opinion that the needs of the public will be subserved by the granting of this application, and I submit herewith the following form of order:

**ORDER.**

E. W. Crosby having applied to this commission for permission to sell the telephone exchange owned by him at Reedley and Reedley Telephone Company having applied to this Commission for permission to purchase this exchange, and also for permission to issue 11,000 shares of its capital stock of the par value of \$1.00 per share, the proceeds of which are to be used in the purchase of the telephone exchange now owned by E. W. Crosby, and also in paying certain obligations of E. W. Crosby to be assumed by Reedley Telephone Company, and a public hearing having been held upon this application, and the Com-

mission being of the opinion that the purposes for which Reedley Telephone Company desires to issue its stock are not in whole or in part reasonably chargeable to operating expenses, or to income,

*It is hereby ordered* that E. W. Crosby be and he hereby is authorized to sell, and that Reedley Telephone Company be and it hereby is authorized to purchase the telephone exchange at Reedley, now owned by E. W. Crosby, upon the condition that the price paid for the property herein authorized to be transferred shall not be taken before this Commission, or any other public authority as representing, for rate fixing or other purposes, the present value of the property transferred.

*It is further ordered* that Reedley Telephone Company be and it hereby is authorized to issue 11,000 shares of its capital stock at the par value of \$1.00 per share upon the following conditions and not otherwise, to wit:

1. The stock herein authorized to be issued shall be issued so as to net Reedley Telephone Company not less than the par value thereof.

2. The proceeds of the stock herein authorized to be issued shall be used to pay for the telephone exchange at Reedley, now owned by E. W. Crosby, and to liquidate the obligations of E. W. Crosby set forth in the opinion in this application, and which are to be assumed by Reedley Telephone Company in this transfer, and also to pay for the expenses of organizing Reedley Telephone Company, and for making betterments in its plant, all as set out in the opinion in this application.

Reedley Telephone Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds derived from the sale of the stock herein authorized to be issued, and on or before the 25th day of each month shall make a verified report to the Commission showing the sale or disposition of the stock herein authorized to be issued, the terms and conditions of such sale, and the disposition of the proceeds derived therefrom, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of March, 1913.



## DECISION No. 497.

IN THE MATTER OF THE APPLICATION OF THE ELSINORE  
ELECTRIC LIGHT AND POWER COMPANY TO SELL AND  
OF THE SOUTHERN SIERRAS POWER COMPANY TO  
PURCHASE A CERTAIN ELECTRICAL SYSTEM SITU-  
ATED AT ELSINORE, COUNTY OF RIVERSIDE, STATE  
OF CALIFORNIA.

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Application No. 358.

*Decided March 12, 1913.*

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Application for approval of transfer by Elsinore Electric Light and Power Company of its plant and equipment to Southern Sierras Power Company for a consideration of \$7,500.00.

*Held*, That the needs of the public at Elsinore will be subserved by the granting of this application; that the purchase price shall not be taken before this Commission, or any other public authority, as representing, for rate fixing or other purposes, the present value of the property.

*J. A. Crane*, for Elsinore Electric Light and Power Company.

*I. B. Potter*, for the Southern Sierras Power Company.

*J. A. Hoag*, for the Board of Trustees of the City of Elsinore.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is a joint application by the Elsinore Electric Light and Power Company and the Southern Sierras Power Company for an order of this Commission permitting the Elsinore Electric Light and Power Company to sell its electrical plant at Elsinore to the Southern Sierras Power Company and permitting the Southern Sierras Power Company to purchase the same.

The Elsinore Electric Light and Power Company was incorporated in this State in 1906, with an authorized capital of \$25,000, consisting of 25,000 shares at one dollar (\$1) per share. At the present time, 8,500 shares are outstanding. No bonds have been issued by this company. The money received from the sale of stock, together with other amounts either borrowed or obtained by assessments on stock, has been put into the construction of the plant at Elsinore, which the company estimates has cost approximately \$12,000.

The Southern Sierras Power Company was incorporated in the State of Wyoming in 1911, with an authorized capital of \$5,000,000, divided into 50,000 shares of the par value of \$100 each, all of which stock has been issued. The Southern Sierras Power Company furnishes electric current for heat, light and power purposes in portions of Inyo, Kern, San Bernardino and Riverside counties.

In the application the Elsinore Electric Light and Power Company states that its plant and equipment at Elsinore must now be extended, in order to meet the needs of the citizens in Elsinore, and that the company does not feel prepared to finance these needed extensions. The Southern Sierras Power Company states that it is prepared to enter Elsinore and to furnish electric current in that city at rates less than those charged at present by the Elsinore Electric Light and Power Company, and at the same time make a more adequate and satisfactory service than has been possible by the local company.

The two companies parties to this proceeding have entered into an agreement, attached to the application and marked "Exhibit B," in which agreement the Elsinore Electric Light and Power Company agrees to transfer to the Southern Sierras Power Company, for a consideration of \$7,500, all of the plant and equipment now used by the Elsinore Electric Light and Power Company in its business of supplying electric current for light, heat, power and other purposes at and near Elsinore, Riverside County, California.

The board of trustees of the city of Elsinore were represented at the hearing, and have expressed to the Commission the desire of the city authorities that this contemplated transfer be allowed. I am of the opinion that the needs of the public at Elsinore will be subserved by the granting of this application, and I submit herewith the following form of order:

**ORDER.**

The Elsinore Electric Light and Power Company having applied for permission to sell and the Southern Sierras Power Company having applied for permission to purchase, for the sum of \$7,500, the entire plant and equipment used by the Elsinore Electric Light and Power Company in the business of supplying electric current for light, heat, power and other purposes at and near Elsinore, Riverside County, State of California, as is more particularly set forth in that certain agreement of sale entered into by the parties to this proceeding, and attached to the application in this proceeding and marked "Exhibit B"; and the board of trustees of the city of Elsinore having requested that this transfer be allowed; and the Commission being of the opinion that the needs of the public at and in the vicinity of the city of Elsinore will be subserved by the granting of this application,

*It is hereby ordered* that the Elsinore Electric Light and Power Company be and the same hereby is authorized to sell and that the Southern Sierras Power Company be and the same hereby is authorized to purchase, for the sum of \$7,500, the entire plant and equipment of the Elsinore Electric Light and Power Company, used in its business of supplying electric current for light, heat, power and other

purposes at and near Elsinore, Riverside County, California, upon the following condition and not otherwise, to wit:

The consideration of \$7,500 which the Southern Sierras Power Company is herein authorized to pay for the plant and equipment of the Elsinore Electric Light and Power Company shall not be taken before this Commission, or any other public authority, as representing, for rate fixing or other purposes, the present value of the property of the Elsinore Electric Light and Power Company herein authorized to be transferred.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of March, 1913.

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DECISION No. 498.

THE BOARD OF TRUSTEES OF THE TOWN OF FAIRFIELD  
*vs.*  
 SOUTHERN PACIFIC COMPANY AND TOWN OF SUISUN CITY.

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Case No. 263.

*Decided March 12, 1913.*

The towns of Suisun and Fairfield adjoin. Defendant railroad maintains a station in Suisun, and passengers to or from Fairfield are obliged to leave or board trains at said station, necessitating a trip of about one mile. Defendant railroad recently constructed a small shelter shed in Fairfield, where it stops only two trains a day, and thus affords some kind of passenger service, but no provision is made for the receipt and delivery of freight in less than carload lots at that point. Complainant prays for an order directing defendant railroad to erect and maintain a passenger and freight depot within the limits of Fairfield for which purpose the citizens of said town propose to donate a block of land. Defendant railroad prays for an order permitting it to establish and maintain a freight and passenger station at or near the intersection of its main tracks with Union avenue in Suisun near Fairfield, and to abandon the present station facilities at Suisun. Defendant town of Suisun asks for a continuance of the depot at its present location, basing its request upon the present needs and requirements of the town as well as on the terms of a contract entered into in 1877 wherein, in consideration of securing a free right of way, a predecessor of defendant railroad agreed to establish and maintain a station at or near Suisun City.

*Held.* With respect to the contract relied upon by the town of Suisun, that the principle laid down in 33 Cyc. 143 is applicable, to wit: "The right to change the location of a station in a particular case cannot be controlled or prevented by contract" \* \* \* "or by the fact that private citizens in expectation of the continuation of a station at a particular place have made donation of land or money to the railroad company" \* \* \* "or purchased property or established business enterprises in the vicinity of the original location." *Atlantic, etc., Company vs. Camp* (Ga.), p. 1, 60 S. E. 177, also cited.

*Held*, It is the duty of the Commission to see that the general public is reasonably and adequately served with transportation facilities, and it must require the installation and maintenance of those facilities which are best calculated to serve the needs and requirements of the entire community, regardless of its effect on the property values of one particular section, or the desire of any locality as against another to enjoy some trade advantages by reason of a depot being located in its immediate vicinity.

*Held*, That the convenience and necessity of the public do not demand at the present time the location of one depot at Suisun and another in Fairfield, but that a depot of defendant railroad at Suisun should be located at or near the junction of Union avenue and its main line tracks at Suisun, at which point said depot will more adequately and reasonably serve the public, including the communities of Suisun and Fairfield, than at its present location.

#### REPORT OF THE COMMISSION.

GORDON and EDGERTON, *Commissioners*.

In this case the board of trustees of the town of Fairfield complains of the inadequacy of the train service of the Southern Pacific Company and of the refusal of that company to provide adequate station facilities for the proper accommodation of passengers and the transaction of freight business, in violation of section 13 (b) of the Public Utilities Act, which is as follows:

“Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.”

The complaint was originally directed against the Southern Pacific Company alone, but in its answer that company requested the Commission to issue an order and serve same upon the governing body of the town of Suisun, making it a codefendant in the case, which action was taken by the Commission.

The material allegations in the complaint are to the effect that when the line of railroad now controlled by the defendant was constructed through Solano County, a depot was established at Fairfield, and that the depot remained at Fairfield until 1877. The complaint alleges that the defendant Southern Pacific Company recently constructed a small shelter shed within the boundaries of the town of Fairfield, but only stops two trains a day at this point, and that passengers desiring to go to Fairfield are obliged to leave or board other trains at the station in the town of Suisun, necessitating a trip of about one mile to Fairfield; also, that while the construction of this shelter and the stopping of two trains a day affords the residents of Fairfield and those desiring to visit that town some kind of passenger service, no provision is made for the receipt and delivery of freight in less than car-load lots at that point.

It is further alleged by the complainant that Solano County has a

population of about 27,000, many of whom are landowners and taxpayers, and that they have from time to time considerable business in the county seat, and that the failure of the defendant to stop trains at Fairfield and provide adequate facilities is the cause of a great deal of inconvenience to such persons as desire to do business at the courthouse.

It is not necessary at this time to consider all of the allegations of the complaint concerning the probable amount of business which would be done at a station if established by the defendant within the confines of Fairfield. It is sufficient to say that the complainant prays for an order of the Commission directing the Southern Pacific Company to erect and maintain a passenger and freight depot within the limits of the town of Fairfield, for which purpose the citizens of Fairfield propose to donate a block of land, known as block ninety-nine (99), in the town of Fairfield.

The defendant Southern Pacific Company in its answer admits that its service and facilities for passengers at the town of Fairfield are inadequate, and should be extended, changed and improved, but denies that the town of Fairfield is the most convenient shipping and receiving point for freight in that vicinity, except the vicinity lying to the east and north of the town of Fairfield.

The defendant Southern Pacific Company for a further and separate defense avers that the town of Suisun and the town of Fairfield are communities of about the same size, same character of population and business interests; that both are located on the defendant's main line of railroad, and that, because of the close proximity to each other, business does not justify the maintenance of two separate depots—one at Fairfield and one at Suisun—and, in short, that the removal of the depot from its present location at Suisun to the junction of Union avenue and its present main line, which would be near the dividing line between the two towns, would adequately serve both communities.

The defendant Southern Pacific Company prays for an order of this Commission permitting it to establish and maintain a freight and passenger station at, or near, the intersection of its main tracks with Union avenue, in the town of Suisun near the town of Fairfield, and to abandon the present station facilities at the town of Suisun. It is pointed out that fully ninety per cent of the freight handled at the present Suisun station is freight in carload lots which is loaded or delivered, as the case may be, on industry tracks or private sidings, without reference to the location of the freight station, and, therefore, the inconvenience of handling less than carload freight is the only point at issue, so far as freight traffic is concerned. Of this less than

carload freight, the defendant Southern Pacific Company states that it is about equally divided between the two towns.

The answer of the defendant town of Suisun denies that no freight service is given to the town of Fairfield, or to its inhabitants, and alleges that the freight traffic is handled at the station of Suisun, and maintains that to move the depot from its present location at Suisun to the junction of Union avenue and the main line of the defendant Southern Pacific Company, as suggested by that company in its answer, would result in serious loss to the inhabitants of the town of Suisun, and that a depot located at Union avenue would not adequately serve the town of Suisun. The defendant town of Suisun bases its right for a continuance of the depot of the Southern Pacific Company at its present location in Suisun on the present needs and requirements of that town, as well as on the terms of a contract entered into on the eighth day of October, 1877, between the Northern Railway and certain citizens of Solano County, which contract, in consideration of securing a free right of way between Cordelia Slough, in Solano County, to the point of junction of the proposed railroad with the California Pacific Railway, easterly of Fairfield station, provided by its terms, among other things, that the Northern Railway would within three months after the completion of its line of railroad between Fairfield and Benicia, "establish and maintain a station at or near the junction of said spur with said Northern Railway at or near Suisun City, for the transaction of the usual railroad business."

Defendant town of Suisun prays that the complainant's prayer that the Southern Pacific Company be required to erect and maintain a freight and passenger station in Fairfield and to extend its Vallejo branch line tracks to said depot be denied.

We shall first consider the geographical location of the towns of Fairfield and Suisun. These two towns, as platted on the map, practically form one community, although there is a small portion of practically unoccupied territory separating the business and residential sections of the two towns. Union avenue in Fairfield runs about north and south from the courthouse in Fairfield, connecting with Main street in Suisun at its intersection with Common street. The Southern Pacific Company's main line passes through the westerly portion of the business and residential sections of Suisun and crosses Union avenue in Fairfield, a distance of about 1,700 feet from the courthouse. The passenger depot at Suisun is approximately 1,150 feet from a point on Main street, between Solano and Sacramento streets, which might be considered as a representative distance from the depot to the business section of Suisun. There is no available wagon road from the passenger depot at Suisun following the Southern Pacific Company's right of way in the direction of Fairfield. Therefore, persons

leaving the train at Suisun, desiring to go to Fairfield, must travel through the town of Suisun on one of the cross streets, thence along Main street and Union avenue to Fairfield, a distance of approximately one mile. Likewise, passengers desiring to travel from Fairfield, if they cannot accommodate themselves to either of the two trains which now stop at Fairfield, must travel approximately a mile to the Southern Pacific depot at Suisun.

The business section of Fairfield is located about 600 feet west of the courthouse, so that from the intersection of Union avenue and the Southern Pacific Company's right of way to the business section of Fairfield, the distance would be about 2,300 feet. From the intersection of Union avenue and the Southern Pacific's right of way to the business section of Suisun the distance is approximately 2,100 feet. From this it will be seen that, so far as distance is concerned, the contention of the Southern Pacific Company that the establishment of a depot at or about the intersection of Union avenue and its right of way would serve both communities impartially, is correct. It was claimed at the hearing, and no testimony was introduced to the contrary, that the population of Fairfield is 900 and that of Suisun 650. The complainant attempted to show that the Suisun Valley was naturally tributary to Fairfield and the large quantity of freight shipped from that section should be handled through a depot located at Fairfield.

The issues in this case should be confined to determining whether or not the town of Fairfield is adequately and reasonably served on the traffic in and out of that community and the contiguous territory, and whether or not the Southern Pacific Company would be justified in establishing a new depot at Fairfield, operating the same as an independent agency and continuing to maintain their present depot at Suisun, or whether by moving the present depot at Suisun to the junction of Union avenue and their main line would adequately serve not only the people of Fairfield, but also the people of Suisun.

At the outset, we believe it is proper to state that in our opinion the defendant Southern Pacific Company should not be required to maintain two separate agencies for the purpose of serving the town of Fairfield and the town of Suisun. On account of the close proximity of these two towns, it is apparent to us that one depot centrally located would adequately serve both communities.

It is not the duty of this Commission to prescribe the location of a railway depot, in order that one particular locality may enjoy advantages over some other district. Neither is it our duty to require carriers to maintain station facilities at certain points for the simple reason that to make any change might have a depressing effect on real estate values in that particular district. It is the duty of the

Commission to see that the general public is reasonably and adequately served with transportation facilities and it must require the installation and maintenance of those facilities which are best calculated to serve the needs and requirements of the entire community, regardless of its effect on the property values of one particular section, or the desire of any locality as against another to enjoy some trade advantages by reason of a depot's being located in its immediate vicinity.

In our opinion the town of Suisun does not enjoy commercial supremacy over Fairfield because of the fact that the Southern Pacific Company's depot is located in Suisun rather than in Fairfield. We believe but a very small percentage of the people who travel to Suisun by rail do so for the purpose of patronizing the local merchants. While a man may have business at the bank in Suisun, or at the courthouse in Fairfield, which would cause him to make a trip from his place of residence to Suisun by rail, we dare say his business would be practically confined to that which takes him to Suisun. In our judgment, the great volume of business done by the merchants of Suisun is with customers who travel to that point by teams and who will continue to go there regardless of whether the depot is in its present location or at Union avenue. It may be true that a depot at Union avenue would not serve the residential portion of Suisun as well as the one in its present location, but as we have stated before, we do not believe the Southern Pacific Company should be required to maintain stations at both Fairfield and Suisun. The Commission must consider the needs of the community as a whole and if a depot at the junction of Union avenue and the Southern Pacific Company's main line will better serve the entire community, it is our duty to see that it is placed there.

The witnesses called by the town of Suisun were apprehensive lest the depot be moved to Block 99 in Fairfield, which the citizens of the latter town urge is the locality to properly serve them. Such an arrangement would place Suisun under the same disability which now confronts the town of Fairfield, and, in our judgment, would be entirely unreasonable. The testimony shows that the drayage charges are no more for hauling freight from the present Southern Pacific depot at Suisun to Fairfield than they are to Suisun proper. Therefore, it is apparent to us that the drayage charges from a depot at Union avenue to either town would be the same and neither community would have any particular advantage over the other.

The burden of the testimony was to the effect that Suisun had the greater number of mercantile establishments, banking institutions and the like, and that people from the surrounding territory came to Suisun to do their trading and in our judgment they will continue to do so, even if the depot is located at Union avenue. We believe that



if the travel could be thoroughly analyzed, it would be found that the majority of people who travel at present to Suisun by rail, do so for the purpose of transacting business with the banking institutions at Suisun, or at the courthouse in Fairfield, and not for the purpose of trading with the merchants of Suisun. The people of Vallejo, Benicia, Dixon, Vacaville, and other towns in Solano County, do the bulk of their trading, we believe, in the immediate vicinity of their places of residence. We believe that the trips which they might make to and from Suisun would be for the purpose of transacting business at the courthouse or banking institutions, and that a depot located at the intersection of Union avenue and the Southern Pacific Company's right of way would serve the public at large to much better advantage than its present location in Suisun, and at the same time would equally serve the combined communities of Suisun and Fairfield.

We shall now consider the contract entered into between the Northern Railway Company and certain citizens of Suisun which calls for the maintenance of a depot for the transaction of the usual railroad business at or near Suisun. Counsel for the town of Suisun has strongly urged that the contract referred to is legally enforceable, and relies, in this connection, principally upon the decision of the Supreme Court of this State in the case of *McCowen vs. Pew* (153 Cal. 735-753). In that case the Supreme Court held that a contract for the location of a line of railroad along a particular route was not necessarily void *per se*. The court, however, clearly intimates that the public convenience and interest may be such as to make such a contract unenforceable. The court, at page 743 of the reporter, specifically states that as public agents, it is the duty of carriers to locate their depots and stations where the public wants and necessities demand their establishment, and to change them and provide others as future public necessities may require. Surely, should the entire town of Suisun be moved to another locality, this contract would not serve to require the railroad to maintain its depot at its present location when the public would be better served by a change. The weight of authority is that such contracts are not void *per se*, and are enforceable so long as they do not conflict and interfere with the duty of the carriers to the public, but that where the rights of the public conflict with those of the contracting party under his contract, the latter must yield and such contracts must be deemed to have been made with reference to such contingency. (See *Atlantic, etc., Company vs. Camp*, 130 (Ga.) p. 1, 60 S. E. 177.)

In 33 Cyc. 143, the principle is stated as follows: "The right to change the location of a station in a particular case cannot be controlled or prevented by contract" (citing authorities), "or by the fact that private citizens in expectation of the continuation of a station at

a particular place have made donation of land or money to the railroad company" (citing cases) "or purchased property or established business enterprises in the vicinity of the original location" (citing cases).

With this expression of the principle we agree.

The Southern Pacific Company has admitted in its answer that the town of Fairfield is not adequately served. This Commission would be derelict in its duty if it did not require that company to install such facilities and provide such train service as will adequately accommodate that town.

We find as a fact, from the evidence in this case, that the convenience and necessity of the public do not demand at the present time the location of one depot at Suisun and another in Fairfield. We find as a fact that the depot of the Southern Pacific Company at Suisun should be located at or near the junction of Union avenue and the main line tracks of the Southern Pacific Company at Suisun, at which point said depot will more adequately and reasonably serve the public, including the communities of Suisun and Fairfield than at its present location. By what name the Southern Pacific Company shall designate the depot so located, the Commission is not interested, but tickets should be on sale at the various stations to Fairfield and passengers should be discharged at this depot. Likewise, freight consigned to Fairfield should be handled at this depot.

We recommend the following order:

**ORDER.**

Complaint having been made by the board of trustees of the town of Fairfield against the Southern Pacific Company, a corporation, that the train service and station facilities at the town of Fairfield are inadequate, and the town of Suisun City, a municipal corporation, having been made a codefendant in the case, and a public hearing having been held on said complaint,

We find as facts (a) that the train service and station facilities of the Southern Pacific Company in the town of Fairfield for the handling of freight and passenger service are inadequate; (b) that the public convenience and necessity do not at the present time require the maintenance of two depots, one in Suisun and one in Fairfield; and (c) that the public convenience and necessity of the people of Suisun and of Fairfield require that the site of the depot now in Suisun be changed to a point at or near the junction of Union avenue with the Southern Pacific Company's main line in the town of Suisun. Basing our conclusion on these findings and on the further findings contained in the opinion which precedes this order,

*It is hereby ordered* that the Southern Pacific Company be and it is hereby directed to move its present Suisun depot to a point at or

near the junction of Union avenue and the Southern Pacific Company's main line in the town of Suisun, or to construct at or near said junction point a freight and passenger depot similar to that now located in the town of Suisun, and thereafter to stop at its depot at or near said junction point, its passenger trains which it has heretofore stopped at its present Suisun depot; and

*It is further ordered* that the Southern Pacific Company within ninety (90) days from the date of this order, prepare and submit to this Commission for its approval, plans showing the location of the proposed depot and the layout of tracks to comply with the order. The depot at said junction point shall be completed within six (6) months from the date of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco this 12th day of March, 1913.

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DECISION No. 499.

CITY OF PALO ALTO  
*vs.*  
PALO ALTO GAS COMPANY.

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Case No. 288.

*Decided March 12, 1913.*

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The rate of \$1.50 per thousand cubic feet for manufactured gas complained against as unjust and unreasonable by the municipal authorities. Upon stipulation by parties all the rates for the entire territory served by respondent, within and without the city, considered at issue. The gas distributed is purchased by respondent from Pacific Gas and Electric Company at a price equal to 50 per cent of the gross income from its sale, under a contract made in 1905 for a term of ten years. The point of manufacture is approximately twenty-three miles from Palo Alto, other communities along the line being served from the same transmission system. Upon the hearing held and investigations made, it was found that the fair value to be assigned for the purpose of this case to respondent's property used and useful in the public service is not in excess of \$69,250, due consideration being given to the element of going concern value; that a rate of return of 8 per cent on said value is at least a fair and equitable rate; that the cost of manufacture and transmission of said gas is not to exceed 53.454 cents per thousand cubic feet; that the cost of distribution, plus the above rate of return, is not in excess of 65.83 cents per thousand cubic feet; that the total cost of manufacture, transmission and distribution, including the above rate of return on the investment does not exceed, at a liberal figure, \$1.19284 per thousand cubic feet. Accordingly,

- Held*, (1) That the existing rate of \$1.50 per thousand cubic feet in effect in the city of Palo Alto, and in the territory adjacent thereto, is an unjust and unreasonable rate.
- (2) That the just and reasonable rate is not to exceed the sum of \$1.20 per thousand cubic feet with a minimum charge of 50 cents per month per meter.
- (3) The contract entered into by respondent for the purchase of the gas distributed by it can not stand as against the power of the Commission under the constitution and the Public Utilities Act to fix just and reasonable rates. Otherwise, a utility, by entering into contracts with third parties for the supply of its commodity or otherwise, could effectually nullify the power of the State, under the police power, to supervise and regulate its public utilities. It is assumed that, as a result of this decision, the parties to the contract will make the necessary modifications therein.
- (4) That with respect to the amount of return to be allowed the gas company on its plant, no fixed percentage applicable to all cases and classes of utilities can be established. Each case must be judged on its own merits. It may well be that a utility in one community would be entitled to one rate of return while a similar concern in another community would be entitled to a different rate. It may be that a large and solidly established utility will not be entitled to as high a return as a smaller utility which is struggling against adverse circumstances. The most that can be said by way of general principles is that the return should be at least the average return which is earned by other classes of business of the same degree of hazard in the same community. The Commission in fixing a rate of return must be liberal, lest too strict a policy result in turning capital to other fields of enterprise. California needs development by public utilities, and this Commission's policy should be a broad and liberal one, so as to encourage capital to develop the State by legitimate public utility enterprises where needed. The Commission should be careful not to permit an inflation of prices in ascertaining the value of the property of a public utility used and useful for the public purpose, but should be liberal in establishing the rate of return on that value.
- (5) That the rate herein established is based on the facts applicable to this case, and that this rate cannot be taken as expressing the Commission's view as to what may be the fair and reasonable rate for artificial gas to be charged and collected in any other community when the facts may be different.
- (6) That a proper allowance should be made for going concern value, but that careful examination should be made into the facts which are alleged to enter into that value.
- (7) That in fixing a basis for a reasonable return, all the elements of the case, including the amount of money invested, the cost of reproducing the property new, the value of the property in its depreciated condition, the amount of stocks and bonds outstanding, and others, should be considered and given such weight as the facts may in each case justify.

*Norman E. Malcolm*, city attorney, for Complainant.

*Chickering & Gregory*, for Defendant.

#### REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is a complaint by the city of Palo Alto, a municipal corporation, against the Palo Alto Gas Company, a corporation, complaining that the present rate for gas supplied to the inhabitants of Palo Alto is unjust and unreasonable, and requesting this Commission to establish a just and reasonable rate. The present rate is \$1.50 per thousand cubic feet with a minimum charge of 50 cents per month. There is no deduction for prompt payment.

On May 22, 1912, the city of Palo Alto, at an election called for that purpose in accordance with the provisions of chapter 40 of the laws of the special session of the legislature of 1911, transferred to the Railroad Commission all the city's powers over public utilities, including gas corporations. Thereafter on July 23, 1912, the city of Palo Alto filed with this Commission the complaint in the present proceeding. On August 22, 1912, the defendant company filed with the Commission an offer to satisfy the complaint by establishing a sliding scale for gas running from \$1.50 to \$1.25 per thousand cubic feet with a minimum monthly charge of 50 cents, or a flat rate to all consumers of \$1.40 per thousand cubic feet with a minimum monthly charge of 50 cents. The city of Palo Alto thereafter, on August 26, 1912, passed a resolution refusing to accept the defendant's offer of satisfaction. Thereafter, on or about September 5, 1912, the Palo Alto Gas Company filed with the Superior Court of this State in and for the county of Santa Clara, a complaint against the members of this Commission, in which complaint the petitioner asked that a writ of prohibition issue to this Commission commanding the Commission and its members to desist and refrain from further proceedings on the complaint filed by the city of Palo Alto, and to show cause why such writ should not become absolute. The Superior Court thereupon issued a temporary restraining order directed against this Commission. The Commission filed a general demurrer, whereupon the matter came on for hearing on the argument on the demurrer. On December 13, 1912, the Superior Court rendered its decision sustaining the demurrer, without leave to amend, and denying the petition for a writ of prohibition. Thereafter on December 21, 1912, the defendant filed its answer denying the material allegations of the complaint. The Commission thereupon set the case for hearing for January 22, 1913. The hearing was held on said day and on other days subsequent thereto, and the case was thereupon submitted and is now ready for decision.

The franchise under which gas is now being distributed in the city of Palo Alto was granted by the board of trustees of the town of Palo Alto to D. O. Druffel by Ordinance No. 105, on September 17, 1904. The franchise is for a period of fifty years, and grants to Druffel, his heirs and assigns, the right to construct, equip, operate and maintain a gas plant in the town of Palo Alto, and to lay gas pipes for the purpose of carrying gas for light, heat and power in and along the public streets and thoroughfares of the town of Palo Alto, and to manufacture, distribute and sell gas to the inhabitants of the town. The town retains the right at any time after the expiration of ten years from the granting of the franchise, to purchase the gas manufacturing plant and dis-

tributing system at a price to be ascertained by arbitration, as provided in the ordinance.

Druffel thereafter organized the Palo Alto Gas Company, the defendant in this case (hereinafter referred to as the Gas Company), for the purpose of exercising the rights granted to him by the franchise. Thereafter, on the thirty-first day of January, 1905, the Gas Company entered into a contract with L. P. Lowe for the installation of a gas distributing system and the building up of the business of such a system. It was provided that Lowe should construct such system and thereafter operate the same up to July 1, 1907, on which date he was to sell and deliver to the Gas Company said system, together with all materials on hand. Lowe agreed that he would secure at least 600 consumers by July 1, 1907. Lowe was to receive payment according to a sliding scale, depending upon the number of meters in actual use on July 1, 1907, as follows:

\$80.00 per meter up to and including 649 meters;  
\$90.00 per meter from 650 to 749 meters inclusive;  
\$100.00 per meter from 750 to 999 meters inclusive; and  
\$110.00 per meter for 1000 meters and over. .

The contract further provided that Lowe should secure an assignment to the Gas Company of Druffel's franchise, and also in the name of the Gas Company a contract with the United Gas and Electric Company for supplying gas for distribution in the town of Palo Alto in the Gas Company's distributing system. Under this contract, Lowe built the distributing system and operated the same until July 1, 1907, on which date the system was conveyed to the Gas Company, in accordance with the terms of the contract. Seven hundred ninety-nine meters had been secured.

Although Druffel's franchise provided for the construction within the town of Palo Alto of a gas manufacturing plant and distributing system, no plant for the manufacture or production of gas has been constructed within the town. The Gas Company's property within the town consists of a distributing system only. The gas which the Gas Company distributes is secured by it from the Pacific Gas and Electric Company under contract dated March 18, 1905, between Palo Alto Gas Company and United Gas and Electric Company (the predecessor in interest of the Pacific Gas and Electric Company). This contract is for a period of ten years, and provides that the United Gas and Electric Company shall deliver to the Palo Alto Gas Company at the latter's storage tanks at Palo Alto all the gas required by the Gas Company. This gas is to be of a quality specified in the contract and is to be delivered at a pressure of between thirty and eighty pounds. The Gas Company agrees to

pay to the United Gas and Electric Company "a sum equal to 50 per cent of the gross income derived from the sale of the said gas in the territory aforesaid" (being the town of Palo Alto and vicinity). The companies are still operating under this contract. It will be noted that the Gas Company pays for its gas an amount equal to 50 per cent of the gross income derived from the sale of the amount of gas recorded on the Gas Company's meters.

The Gas Company has been unusually active in soliciting customers, with the result that in December, 1912, it claimed to have 1,353 meters in use. It claims to have sold during the year 1912, 28,952,900 cubic feet of gas. As the result of the Gas Company's activity in soliciting business, the proportion of consumers to the population is unusually large. Mr. L. P. Lowe, half owner of the company, testified that Palo Alto is one of the best gas towns in the world.

The gas distributed by the Gas Company is manufactured by the Pacific Gas and Electric Company at its Potrero plant in the city of San Francisco. It is there conveyed through a twelve (12) inch main to Martin Station, where it is compressed. It is then conveyed through a transmission line in a general southerly direction down what is known as the Peninsula to Redwood City, and thence by a branch transmission line to the city of Palo Alto, where the gas is delivered to the Gas Company for distribution. The transmission line down the Peninsula also delivers gas to South San Francisco, Burlingame, San Mateo, Hillsborough and Redwood City. The length of the transmission main to Redwood City is 23.73 miles and from Redwood City to Palo Alto 6.156 miles. According to the estimate of Assistant Engineer Arthur R. Kelley of this Commission, there were as of September 14, 1912, 53,160 feet of two-inch mains, 39,285 feet of one and one quarter inch mains and 9,280 feet of one-inch mains in the Gas Company's distributing system, and 1,095 services. The distributing plant has been carefully constructed and is in a comparatively good state of preservation.

I shall now consider the question of the proper value to be assigned for the purpose of this case to the Gas Company's property used and useful in the public service. Every effort has been made to ascertain all the material facts bearing on this question. Under the Commission's direction, one of its engineers and one of its accountants made a careful investigation into the Gas Company's plant and books of account. After a preliminary refusal to permit an inspection of the books of the Palo Alto Gas Appliance Company, of which company I shall have more to say hereafter, the defendant co-operated fully with the Commission in presenting all the facts in its possession. The fullest opportunity was given to the Gas Company to present any evidence it considered material, and the company availed itself freely of this right. I shall

attempt to consider the material facts bearing on the proper value, giving to each the weight to which I consider it from the evidence to be entitled.

The authorized capital stock of the Gas Company has a par value of \$200,000. The stock has all been issued, and is held in equal shares by L. P. Lowe and D. O. Druffel. It was at first desired by the company to have an authorized bonded indebtedness of \$200,000. Under the law of this State, as it then stood, it was necessary to have an authorized capital stock of an equivalent amount. Nothing at all was paid for this stock. While the contract between Lowe and the Gas Company, dated January 31, 1905, and hereinbefore referred to, provided that 1,995 shares of the Gas Company's capital stock should be issued to Lowe upon securing the agreement with the United Gas and Electric Company, Lowe testified that the United Gas and Electric Company had approached him to see whether it could not sell him the gas and Druffel testified very frankly that his stock had cost him nothing. The plan to have an authorized bonded indebtedness of \$200,000 was later changed so that the bonds actually authorized amount to \$150,000, face value. Of the bonds so authorized 86 bonds, having a face value of \$86,000, were issued to L. P. Lowe as of January 1, 1908, in payment for the Gas Company's distributing system for which, under the contract, Mr. Lowe was entitled to receive \$100 per meter in bonds and for supplies estimated at \$7,604.30. Thereafter additional bonds of the face value of \$10,000 were delivered as of January 1, 1910, in exchange for promissory notes of the Gas Company given to its stockholders in lieu of a cash dividend of \$10,000 declared out of surplus in February, 1910. There are at present outstanding 96 bonds having a face value of \$96,000. The bonds bear interest at the rate of 6 per cent per annum.

There is no satisfactory evidence as to the original cost of the distributing plant which on July 1, 1907, was conveyed by Lowe to the Gas Company in return for bonds of the face value of \$86,000. The original records which would show the amount of money expended in the construction of the plant were destroyed in the San Francisco fire of April, 1906. As bearing on this question, I desire to refer to the statement filed by the Gas Company with the town of Palo Alto as of December 31, 1908. This statement gives the value of the physical property as \$60,769.30, and adds thereto a value for business development in the amount of \$20,925. Mr. Lowe testified that the company thereafter spent in additions to the plant up to December 31, 1912, the sum of \$17,555.40. As I have already said, I consider the evidence on the point of original cost to be unsatisfactory.

The cost of reproducing the property new was the subject of a large



amount of evidence. I shall consider this matter under three heads, as follows:

- (1) Manufacturing plant;
- (2) Transmission system;
- (3) Distributing system.

(1) *Manufacturing plant.*

As I have already stated, the gas distributed by the Gas Company is manufactured in the Potrero plant of the Pacific Gas and Electric Company, located in the city of San Francisco. Mr. John A. Britton, vice president and general manager of the Pacific Gas and Electric Company, and a witness for the defendant in this case, presented to the Commission a schedule showing the value of the Potrero plant and of the transmission mains between that plant and the city of Palo Alto, and also other data showing the earnings and expenses connected therewith. The valuation presented by Mr. Britton was prepared by J. C. White & Company, and represents the cost of reproducing the property new. This cost amounts to \$2,630,411 for the manufacturing plant. This cost includes a total of 26 per cent for overhead charges. On the facts of this case I am of the opinion that this percentage should be reduced to 15 per cent. The Pacific Gas and Electric Company, in addition to claiming that it was entitled to interest at the rate of  $8\frac{1}{2}$  per cent annually on the value of the plant reproduced new, claimed the right to include in manufacturing cost an additional item for depreciation. Whether this is proper will depend largely on the use to which the amounts annually set aside for depreciation are devoted. In considering this matter, it should be borne in mind that the valuation prepared by J. G. White & Company estimates the cost to reproduce new, whereas Mr. Britton testified that there was considerable depreciation in the plant, amounting to as high as 10 per cent annually for certain items, and that the plant had been constructed several years ago.

To the theory expressed by Mr. Britton, that as long as a plant can do its work, it should be regarded for rate fixing purposes as having 100 per cent value, this Commission cannot give adherence.

(2) *Transmission system.*

The valuation claimed by the Pacific Gas and Electric Company for its transmission system for the Potrero plant to Palo Alto properly chargeable to the Redwood district is \$127,483. The remarks made in the preceding paragraph with reference to percentage of overhead charges and proper basis for rate fixing apply equally to this item. Mr. Britton testified that in his opinion the life of this main was between fifteen and twenty years. It was constructed in the years 1905 and 1907.

(3) *Distributing system.*

Two complete estimates of the cost of reproducing the Gas Company's distributing system, together with considerable additional fragmentary evidence on this question, were presented to the Commission.

Mr. C. L. Cory, a witness for the defendant, presented a complete estimate of the cost of reproducing the plant to-day under the conditions that were existent at the time the plant was constructed, in so far as possible. A summary of Mr. Cory's estimate of the cost of reproducing the physical portions of the plant on this basis is as follows:

|  |             |
|--|-------------|
| Compression storage tanks, fittings, piping----- | \$5,352 00  |
| Street mains -----                               | 39,997 99   |
| Gas services and regulators or governors-----    | 12,563 74   |
| Gas meters and connections -----                 | 14,302 90   |
| Teams, wagons and tools-----                     | 746 33      |
| Furniture and fixtures -----                     | 1,874 80    |
| Stores and supplies -----                        | 835 20      |
| Working capital (nil).-----                      |             |
| Total -----                                      | \$75,672 96 |

In this estimate Mr. Cory includes for engineering, supervision, tools, casualty insurance, administration during construction and interest and taxes during construction, 12 per cent for street mains and services and for meters an item of 11 per cent for testing, store expenses, tools and breakage, supervision, administration, interest during construction and carrying charges. Mr. Cory includes no allowance for paving or repaving for the reason, as stated by him, that "it would seem that the amount of cutting of pavements of any kind at the time your distribution system was installed was of no considerable moment, although since the laying of your distribution system considerable paving has been put over them."

Mr. Arthur R. Kelley, one of the assistant engineers of the Commission, presented a revised complete estimate of the cost of reproducing new, as of September 14, 1912, the physical portions of the plant of the Gas Company, as follows:

|   |                    |
|---|--------------------|
| (1) Distributing mains (including \$4,800 for pressure tanks)-----                                  | \$26,735 00        |
| (2) Services -----  | 6,982 00           |
| (3) Pressure regulators -----   | 4,911 00           |
| (4) Meters -----  | 10,182 00          |
| (5) Furniture and fixtures-----   | 900 00             |
| (6) Teams and vehicles-----   | 325 00             |
| (7) Tools, implements and testing apparatus-----  | 412 00             |
|   | <u>\$50,447 00</u> |
| (8) Engineering, superintendence and organization 10 per cent<br>of items (1) to (7) inclusive----- | 5,045 00           |
| (9) Contingencies, 5 per cent of items (1) to (8) inclusive---                                      | 2,775 00           |
| (10) Interest during construction, 3 per cent of items (1) to<br>(9) inclusive -----                | 1,749 00           |
| (11) Stores and supplies-----   | 827 00             |
| Total cost of reproduction-----   | <u>\$60,843 00</u> |
| (12) Paving to be torn up and relaid-----   | 38,856 00          |
| Total cost of reproduction including paving-----  | <u>\$99,699 00</u> |

Mr. Kelley testified with reference to the item for paving, that the item had been calculated so that if the Commission saw fit to include it as a part of the cost of reproducing the plant as it is to-day, the Commission might have the facts before it. If the cost of reproducing the plant new were the sole fact to be ascertained in determining the proper basis on which to fix rates, it might be logical to include the entire amount for tearing up and relaying pavement as estimated by Mr. Kelley. In view of the fact, however, that other elements, including original cost, must be considered, and that the amount actually expended by the Gas Company for this purpose was only \$1,198.24, it would seem more proper in determining the basis for fixing rates to follow the course pursued by Mr. Cory and not to include an amount for tearing up and relaying pavement in excess of the amount actually expended therefor.

It will be noted that Mr. Cory's estimate is \$14,829.96 higher than Mr. Kelley's. Of this amount, after making due allowance for the varying percentages for overhead charges, over \$14,000 difference is found in the items of compression storage tanks and the street mains. It will be noted that Mr. Cory estimates the compression storage tanks at \$5,352, while Mr. Kelley estimates them at \$4,800. In its report to the town of Palo Alto, dated December 31, 1908, the Gas Company showed the following item: "4 underground gas storage tanks with fittings, regulators, etc., at \$1,200 each, \$4,800."

The greatest divergence is in the matter of street mains. Without considering overhead expenditures, the estimates of Mr. Cory and Mr. Kelley are as follows:

|                   | Cory.      | Kelley.  |
|-------------------|------------|----------|
| 1 inch pipe.....  | 30 cents   | 16 cents |
| 1½ inch pipe..... | 33.5 cents | 18 cents |
| 2 inch pipe.....  | 36 cents   | 22 cents |

Mr. Cory seems to have relied largely on a job of laying two-inch mains performed by the Gas Company for Stanford University, and on a large amount of work performed by the Los Angeles Gas and Electric Corporation in adobe streets in and about Los Angeles with comparatively little paving, where the original costs were all available, and where a record was kept of the work as it progressed, as testified to by him on page 398 of the transcript.

With reference to the Stanford job, the cost as claimed by the Gas Company was \$1,614.63 for laying 5,134 feet of two-inch main, or 31.5 cents per linear foot, which price included superintendence and depreciation of tools. The job was admittedly a detached one, and at least a portion of the laying was done in macadamized or graveled streets.

With reference to the work in and about Los Angeles, Mr. Cory's ap-

praisement of the Los Angeles Gas and Electric Corporation's property was filed with the Board of Public Utilities of the city of Los Angeles. A detail of this report, in so far as it affects the cost per foot of wrought iron street mains exclusive of paving, has been filed with the Commission, and was introduced as an exhibit in this case. It shows that the total cost, exclusive of paving, and not including overhead expenses, of laying two-inch mains, including materials and labor was only 21.408 cents. This item, it will be noted, is within a fraction of a cent of Mr. Kelley's estimate. The item does not include the cost of replacing street surface. This cost was estimated to vary from 1.4 cents per foot for unimproved streets to 41.75 cents per foot for asphalt streets. The evidence also shows that an appraisal prepared by J. G. White & Company for the San Joaquin Light and Power Company estimates the cost of laying two-inch high pressure gas mains in the city of Bakersfield 23.6 cents per foot, in the city of Selma at 22.9 cents per foot, and in the city of Merced at 22.6 cents per foot. I am equally convinced from the evidence in this case that Mr. Kelley's estimate on two-inch pipe may be slightly low and that Mr. Cory's estimate is much too high. I am using the two-inch main as illustrative, and will not pause to analyze the cost for one and for one and one quarter inch mains, as to which the same general results will follow.

Mr. Kelley confined his estimate to a valuation of the physical elements of the Gas Company's plant, and did not undertake to place an estimate on the item which is variously called "going value," "going cost," "development value," "development cost," "cost to get the business," and by other names. Mr. Cory included amounts for the expense of organization, cost of advertising and other direct development expenses, the interest on a physical valuation of about \$60,000 for one and one half years after gas was first served by the Gas Company's system, and the difference between the receipts and operating expenses for this one and one half year period as estimated by a curve of the growth of the company's business. Mr. Cory's estimate is as follows:

|  |                    |
|--|--------------------|
| Organization expense .....   | \$2,500 00         |
| Six per cent for 1½ years on \$60,000.....   | 5,400 00           |
| Deficit or margin between operating expenses and revenue,<br>average for 1½ years..... | 6,000 00           |
| Expense, advertising, etc., in developing business.....                                | 2,000 00           |
| <b>Total .....</b>   | <b>\$15,900 00</b> |

I would say, in passing, that the item of organization expense seems to duplicate the item of administration during construction already estimated by Mr. Cory in his physical appraisal.

In this connection I desire to quote from the decision of the Wisconsin Railroad Commission in the case of *State Journal Printing Company*

vs. *Madison Gas and Electric Company* (Vol. IV, Wisconsin Railroad Commission Reports, 501, 577) as follows:

"Investigations of the facts involved make it quite obvious that justice between the investors on the one hand and the consumers on the other requires that in valuing public utilities consideration should be given to the amounts expended by the former in building up the business of such plants. This is especially true when the earnings of a utility have not been sufficient to meet reasonable expenditures for development of the business and besides this cover operating expenses, depreciation, and reasonable returns on the investment. No public utility can be a paying concern until it has obtained a paying business. To secure enough takers so that the revenues obtained from them will adequately meet all reasonable outlays, is a matter that usually requires both expenditures and time. Comparatively few plants are therefore paying at first. Several years are often required to obtain customers enough for a paying business. In the meantime the plants have to be kept in operation and the losses from such operation made up by investors. When these losses are due to such delays in securing the required amount of business which cannot be reasonably avoided, and have not been covered by subsequent surplus earnings, it is difficult to avoid the conclusion that they must also be regarded as one of the elements that should be considered in appraising the plant and fixing their rates. If investors are not compensated for such losses either by being allowed reasonable returns thereon or through surplus earnings, they will not continue to invest their money in plants of this kind. Again, the investors would seem to be entitled to such compensation on the ground of equity alone; for these losses enter into the cost of the service, and, under normal conditions, it is only fair that the rates charged for the services rendered are fixed at a level that is high enough to cover all reasonable costs."

That there are certain actual costs incurred in developing the business during its early stages, for which costs the utility is entitled to be reimbursed, just as clearly as it is entitled to a return on the physical portions of its plant, seems to be too obvious for argument. The investor must go into his pocket to meet one kind of cost just as clearly as the other. There are two schools of thought with reference to the manner in which the so-called "going concern" value or "development cost" should be met. The supporters of one school are of the view that these items should be added to capital account, while those of the other school believe that they should be taken care of by rates higher than would otherwise be in effect, during the first years of the utility's existence. The difficulty with the first view is that its adoption will result in the increase of the permanent capital account and the consequent payment

of higher rates for all time to come. The difficulty with the latter view is that it casts upon the patrons during the first years the duty of paying rates even higher than the usual relatively high rates which are paid at the outset of a utility's history. I am of the opinion that such costs, legitimately and wisely incurred, should be taken care of in some way, but the exact method to be pursued, and the extent to which consideration should be given to such items, will depend upon the facts of each particular case. It might well be, for instance, that if the utility is unwisely conceived or struggles against unusual difficulties, the cost of developing the business including the early losses may run up to almost the entire value of the physical plant, if not in excess thereof. It may happen, also, that while in one case the addition of these costs to capital account might be perfectly fair, in another case justice will require that these costs be reimbursed out of higher rates during the first few years, or that some combination of these theories be adopted. In the present case in giving consideration to Mr. Cory's estimate, it should also be borne in mind that on January 1, 1910, being some two and one half years after the Gas Company took over the plant, a dividend of \$10,000 out of surplus earnings was declared and that the amounts which have been charged off to depreciation have admittedly been larger than necessary. In finding the value to be used as a basis for fixing rates in this case I shall give due consideration to the element of going concern value.

With reference to the value of the plant in its present condition, or the cost of reproduction less depreciation, Mr. Cory presented no estimate. Mr. Kelley reached the conclusion that the ratio of the present condition of the distributing system to the cost of reproduction new is approximately 77 per cent. The fact that the property is not new will have material bearing in determining the proper basis for fixing the rate in this case.

Before leaving these engineering questions, I deem it pertinent to comment on the very important and responsible position of engineers and other experts who testify before this Commission in matters of valuation, and in other matters affecting public utilities. On the accuracy of their testimony will depend to a large extent the just solution of many of the problems presented to the Commission. In order that the Commission may be fair in its decisions, it must know the absolute truth. I desire to express the hope that all engineers testifying before the Commission will realize their high function and will consider themselves in so far as possible as witnesses not for the party who calls them, but for the people of the State of California sworn to tell the Commission the truth to the best of their knowledge and ability. The Commission will from time to time have occasion to check over the testimony of the various engineers appearing before it, and the weight which the Com-

mission will give to the testimony of these various engineers and other experts will depend very largely on how closely the estimates and other testimony given by them check up with what the Commission after due consideration believes to be the truth. I am hopeful that before long the engineer who seeks at all times to speak the absolute truth will be the one most in demand by public utilities in cases pending before this Commission.

This Commission will scrutinize the testimony of its own engineers with the same care with which it examines the testimony of other engineers testifying before it. The fact that one of the Commission's engineers reaches a certain result, or uses a certain percentage or adopts a certain theory, is by no means conclusive on the Commission. For instance, in the present case Mr. Kelley, out of an apparent desire to be at least fair, has allowed 5 per cent for contingencies to take care of items which might have been overlooked. I have very serious doubts as to whether in estimating the cost of producing a property new, when all the items which went into the property are clearly ascertainable, any allowance whatsoever should be made for this class of contingencies. Such items as taxes and insurance, however, should be taken care of. There may be reason for some allowance for contingencies in addition to taxes and insurance when an engineer is estimating the cost of a plant which is to be constructed, but very little when the plant has actually been constructed and the sole question is what it would cost to reproduce the existing plant new. It should also be borne in mind that percentage adopted by the Commission as fair in one case may be found not to be fair in another. Each case must be judged on its own merits.

I have now considered the principal evidence in this case bearing on the question of the value to be assigned to the plant for the purpose of establishing the rate of return. The elements to be considered in establishing the rates of compensation to be collected by transportation companies are laid down in the case of *Smyth vs. Ames* (169 U. S. 466), in which case the court at page 546 uses the following language:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters

to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

These same tests may be considered in ascertaining the basis on which to establish the rate to be charged by other classes of utilities until the Supreme Court lays down another rule. In finding the value in this case, I have considered all the elements referred to by the Supreme Court, in so far as they have been presented in the evidence in this case, giving each such weight as it seemed to merit, with a desire to find a value which should be just and equitable. After a careful consideration of all the facts I find as a fact that the fair value of the property of the defendant used and useful for the public service, as disclosed by the evidence in this case is not in excess of the sum of \$69,250.

I shall now consider additional elements in the problem, namely, maintenance, operation, depreciation, interest and taxes. I shall follow the general plan which I pursued in connection with ascertaining the value of the different portions of the plant or system used in the manufacture, distribution and transmission of the gas.

(1) *Manufacture or production cost.*

The Pacific Gas and Electric Company gives the annual cost of maintenance and operation of its Potrero plant as \$924,231. There is no data in the evidence on which this item may be questioned. The company also claims an item of \$63,722 for depreciation. The company cannot consistently ask for a return on its property as if it were new and also expect to set aside a depreciation fund. The company also claims an item of \$223,585 for interest. This is interest at the rate of  $8\frac{1}{2}$  per cent on the cost of reproducing the property new, as reported by J. G. White & Company. In reply to the Commission's inquiry as to how the percentage was arrived at, Mr. Britton testified that the company sold its 5 per cent bonds at 85, and that while this amounted only to paying interest at the rate of 5.88 per cent there was a provision in the company's bond mortgage to the effect that no additional bonds may issue until the company has earned one and one half times the amount of the bond interest. The discount on the bonds amortized over the life of the bonds brings the annual cost to 6.1 per cent, and adding thereto one half of the 5 per cent makes the total of 8.6 per cent. I am not at all impressed with this line of reasoning. It amounts in effect to asking the public to pay additional rates so as to bring the earnings up to one and a half times the bond interest, which earnings are then to be capitalized to serve as the basis of future rates. Mr. Hockenbeamer, auditor



of the Pacific Gas and Electric Company, testified that on first-class mortgages in San Francisco on large projects bonds are being issued bearing  $5\frac{1}{2}$  per cent interest, while smaller loans cost 7 or 8 per cent. I am convinced that the item of interest as claimed by the Pacific Gas and Electric Company is in excess of the amount which should be allowed. Considering these various items, including taxes, and bearing in mind a loss of at least 14 per cent in transmission from the Potrero plant to the meters in Palo Alto, I find that the cost of producing the gas which is thereafter delivered in Palo Alto, including a fair return on the investment, is not to exceed 30.694 cents per thousand cubic feet. In making this finding the Pacific Gas and Electric Company's estimate of the cost of reproducing its property new is taken without question except as to the item of percentage for overhead expenses.

(2) *Transmission cost.*

The Pacific Gas and Electric Company claims an item of \$12,800 for maintenance and operation in connection with the transmission of the gas from the Potrero plant to Palo Alto. This item is undoubtedly much higher than it should be by reason of the fact that an undue proportion of the maintenance and operation expenses at Martin Station has been segregated to the Peninsula high pressure transmission mains. The actual cost of maintenance and operation of the Martin Station and the transmission line, properly chargeable to the Redwood district, should not be in excess of \$6,000. To be very liberal, I am considering it as \$8,000. These items in common with all the other items presented by the Pacific Gas and Electric Company are subject to revision, if they should become relevant in any future proceedings before this Commission. The remarks hereinbefore made under the head of production cost with reference to interest and depreciation apply equally to this heading. The Pacific Gas and Electric Company claims an annual item of \$8,734 for depreciation. This is almost 7 per cent and is undoubtedly too high.

I find from the evidence in this case that on a very liberal estimate the transmission cost of the gas manufactured in the Potrero plant and thereafter delivered to the consumers of the Gas Company, including a fair return on the investment, is not in excess of 22.76 cents. The cost of production and transmission is consequently not in excess of 53.454 cents per thousand cubic feet.

(3) *Distribution costs.*

The income account of the gas company for the year 1912 is reported by the company as follows:

|                                |             | Debit.      | Credit.     |
|--------------------------------|-------------|-------------|-------------|
| <i>Gas—</i>                    |             |             |             |
| Gas sales .....                | \$13,429 35 |             |             |
| Gas purchases .....            | \$21,714 68 |             |             |
| Gas sales wages .....          | 4,615 40    |             |             |
| Gas sales expense .....        | 1,224 39    |             |             |
| Rent .....                     | 260 00      |             |             |
| General expense .....          | 770 03      |             |             |
| Insurance .....                | 109 20      |             |             |
| Property rental .....          | 528 67      |             |             |
| Property repairs .....         | 81 80       |             |             |
| Franchise privilege .....      | 774 81      |             |             |
| Legal expense .....            | 765 05      |             |             |
| Advertising .....              | 2 25        |             |             |
| Interest .....                 | 1 20        |             |             |
| Officers' salaries .....       | 2,400 00    |             |             |
| Meter and governor repairs ..  | 123 75      |             |             |
| Development .....              | 203 23      |             |             |
|                                | 33,574 46   |             | \$9,854 89  |
| <i>Miscellaneous credits—</i>  |             |             |             |
| Service .....                  | \$261 10    |             |             |
| Discount .....                 | 2 21        |             |             |
| Previous year .....            | 356 67      |             |             |
| Incidental receipts .....      | 4 48        |             |             |
|                                |             |             | 624 46      |
| <i>Miscellaneous debits—</i>   |             |             |             |
| Depreciation .....             | \$4,240 08  |             |             |
| Incidental disbursements ..... | 44 05       |             |             |
| Bad debts .....                | 190 20      |             |             |
|                                |             | \$4,474 33  |             |
| <i>Taxes, fixed, etc.</i>      |             |             |             |
| Taxes .....                    | \$1,478 36  |             |             |
| Bond interest .....            | 5,760 00    |             |             |
|                                |             | 7,238 36    |             |
| E. & O. E. loss and gain ..... |             |             | \$1,233 34  |
| Totals .....                   |             | \$11,712 69 | \$11,712 69 |

The item of gas sales wages includes the entire salary of the general manager, a portion of which should properly be chargeable to the Palo Alto Gas Appliance Company, a subsidiary corporation of the Gas Company formed for the purpose of handling gas appliances and of installing the service connections inside of the property line, and the meters. The defendant insists that it is not intended that this company shall make a profit, but that the company was organized as a matter of convenience to perform services which the Gas Company would otherwise have to perform. The annual report of the Appliance Company for the year 1912 shows a profit of \$1,100.31, on the assumption that the appliances on hand, which are of com-

paratively small value, are worth what they cost, and that the outstanding accounts of the company are good. As the general manager of the Gas Company devotes a considerable portion of his time to the Appliance Company, of which company he is also general manager, an equitable portion of his salary should be charged to the Appliance Company, thereby decreasing to that extent the operating expenses of the Gas Company. The same is true of the item of rent. The testimony shows that the front portion of the store is devoted to the Appliance Company, and that a large portion of the floor space is devoted to that company. The same observation applies to other items in the expense account, including the item of officers' salaries, amounting to \$2,400. It may be said in passing that the total of items which should be charged to the Appliance Company in case that company made a profit to that extent would be in excess of the Appliance Company's net profit for the year ending December 31, 1912. The item of \$765.05 for legal expense consists mostly of expense in connection with two suits instituted by the Gas Company, one against the city of Palo Alto and one against the Railroad Commission, to prevent the public authorities from fixing the defendant's rates. A utility has, of course, the right to assert its rights in court in case a public authority has treated it unjustly. I understand that in the suit against the city of Palo Alto the city has practically confessed judgment. In the suit against the Railroad Commission, however, to prevent the Railroad Commission from exercising its authority under the law, the Commission was sustained in court. I am disinclined under these circumstances to allow any amount for the legal expenses incurred in the suit against this Commission. Otherwise, a public utility could pay expensive legal fees in seeking to prevent its lawful regulation by public authority, and then make the public pay the bill.

The item of depreciation amounting to \$4,240.08 is frankly admitted by Mr. Lowe to be too high. Whether or not a utility makes a profit very often depends on the amount of the item charged to depreciation. I am convinced from the evidence in this case that the amount properly chargeable for depreciation is not in excess of \$2,748.

This brings me to a consideration of the final question in the case, namely, the amount of return to be allowed the Gas Company on its plant. No fixed percentage applicable to all cases and all classes of utilities can be established by this Commission. Each case must be judged on its own merits. It may well be that a utility in one community would be entitled to one rate of return while a similar concern in another community would be entitled to a different rate. It may be that a large and solidly established utility will not be entitled to as high a return as a smaller utility which is struggling against adverse circumstances. The most that can be said by way of general

principles is that the return should be at least the average return which is earned by other classes of business of the same degree of hazard in the same community. The Commission in fixing a rate of return must be liberal, lest too strict a policy result in turning capital to other fields of enterprise. California needs development by public utilities, and this Commission's policy should be a broad and liberal one, so as to encourage capital to develop the State by legitimate public utility enterprises where needed. The Commission should be careful not to permit an inflation of prices in ascertaining the value of the property of a public utility used and useful for the public purpose, but should be liberal in establishing the rate of return on that value. Bearing in mind all the facts of this case as shown by the evidence, I find that a rate of return of 8 per cent on the value of the property of the Palo Alto Gas Company used and useful for the public purpose, as fixed herein, is at least a fair and equitable rate of return. If anything, the rate is too high by reason of the fact that the Commission has been more than liberal in establishing the basis of value.

The contract between the Gas Company and the United Gas and Electric Company can not stand as against the power of this Commission, under the Constitution and the Public Utilities Act, to fix just and reasonable rates. Otherwise, a utility, by entering into contracts with third parties for the supply of its commodity or otherwise, could effectually nullify the power of the State, under the police power, to supervise and regulate its public utilities. I assume that as a result of this decision the parties to the contract will make the necessary modifications therein.

During the year 1912, the Gas Company sold 28,952,900 cubic feet of gas. I find that the cost of distributing gas by the Gas Company, taking into consideration all material elements, including a fair return on the investment and taxes, is not reasonably in excess of 65.83 cents per thousand cubic feet. Adding this amount to the total of 53.454 cents for manufacture and transmission gives a total of \$1.19284 as a liberal outside cost, including a fair return on the investment, per thousand cubic feet of gas sold in Palo Alto and the adjacent territory by the Gas Company. I have tried throughout to be at least fair to the Gas Company. It may be that the rate herein established will hereafter be found to be in excess of a reasonable rate, but I think it wiser to err, if at all, on the side of justice to the utility, particularly in view of the fact that the reduction herein ordered will be a substantial one, amounting to approximately 20 per cent in the Gas Company's revenue on the improbable assumption that the consumption will not increase. It should be borne in mind also that the Gas Company does not manufacture its own gas, but secures it through a transmission line from a point twenty-three miles distant. It should be

remembered also that the rate herein established is based on the facts applicable to this case, and that this rate can not be taken as expressing this Commission's view as to what may be the fair and reasonable rate for artificial gas to be charged and collected in any other community when the facts may be different.

There is no complaint in this case with reference to the minimum of 50 cents per month per meter, and this minimum will not be disturbed. I find that there is not enough difference in the amount of gas used by the different customers of the Gas Company to make necessary a graduated scale of rates. After a careful review of all the facts of the case I find that the existing rate of \$1.50 per thousand cubic feet of gas now charged by the defendant in this case is an unjust and unreasonable rate, and that a just and reasonable rate would be \$1.20 per thousand cubic feet, and I hereby recommend that such rate be established.

I submit herewith the following form of order:

**ORDER.**

The city of Palo Alto having filed with this Commission its complaint against the Palo Alto Gas Company, alleging that said company's existing rates for artificial gas are unjust and unreasonable, and requesting this Commission to establish rates which shall be just and reasonable, hereafter to be charged and collected by said Palo Alto Gas Company, and the parties having stipulated that all the rates for the entire territory served by the Palo Alto Gas Company both within and without the city of Palo Alto may be considered to be at issue in this case, and a public hearing having been held and evidence having been introduced by both parties, and the Commission being fully advised in the premises, we hereby find as a fact:

(1) That the existing rate of \$1.50 per thousand cubic feet of gas charged and collected by the Palo Alto Gas Company in the city of Palo Alto, and in the territory adjacent thereto, served by said company, is an unjust and unreasonable rate.

(2) That the just and reasonable rate for gas to be charged and collected by said Palo Alto Gas Company in the city of Palo Alto, and in the territory adjacent thereto, served by said company, is not to exceed the sum of \$1.20 per thousand cubic feet of gas delivered, with a minimum charge of 50 cents per month per meter.

Basing our conclusions on the foregoing findings of fact and on the further findings of fact contained in the opinion which precedes this order,

*It is hereby ordered* that Palo Alto Gas Company within twenty (20) days from the date of service on it of a copy of this opinion and order, publish and file with this Commission, and thereafter charge

and collect from its customers in the city of Palo Alto and the territory adjacent thereto served by said company, the sum of \$1.20 per thousand cubic feet of gas delivered, with a minimum charge of 50 cents per meter per month.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of March, 1913.

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Decisions Nos. 500, 501, 502 and 503, grade crossings: not printed. See end of volume.

DECISION No. 504.

IN THE MATTER OF THE APPLICATION OF CENTRAL PACIFIC RAILWAY COMPANY, SOUTHERN PACIFIC RAILROAD COMPANY AND SOUTHERN PACIFIC COMPANY FOR AUTHORIZATION TO MAKE A LEASE OF A CERTAIN RAILROAD; TO MAKE A SALE OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR THE JOINT USE AND POSSESSION OF A CERTAIN RAILROAD; TO MAKE A CONTRACT FOR RUNNING AND TRACKAGE RIGHTS OVER A CERTAIN RAILROAD; AND TO MAKE A CONTRACT FOR THE JOINT USE OF CERTAIN RAILROAD TERMINALS.

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Application No. 409.

*Decided March 14, 1913.*

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REPORT OF THE COMMISSION.

TELEGRAM.

SAN FRANCISCO, CALIFORNIA, March 14, 1913.

*Honorable James McReynolds, Attorney General, care of United States Circuit Court of Appeals, St. Louis, Mo.*

DEAR SIR: Representatives of the Union, Southern and Central Pacific appeared before this Commission last night asking for a statement of its position with reference to a certain modified unmerging agreement and the position of this Commission is embodied in the following statement:

Heretofore on the twenty-fourth day of February, 1913, this Commission approved with certain conditions the application of the Central

Pacific Railway Company, the Southern Pacific Railroad Company and the Southern Pacific Company to enter into certain relationships set out in full in the opinion heretofore rendered. This Commission granted the application upon seven conditions, all of which appear in the order heretofore rendered, reference to which is had for particulars.

On February 22d, the Union Pacific Railroad Company and the Central Pacific Railway Company filed an application wherein approval of this Commission was asked of a lease set out therein by the Central Pacific Railway Company to the Union Pacific Railroad Company of all the property of the Central Pacific Railway Company located within the State of California south of Tehama. By reason of Mr. Lovett's statement that the imposition of any conditions by this Commission would defeat the agreement, no specific action has been taken upon the application for approval of the lease.

On March 13th, 1913, the Union Pacific Railroad Company and the Central Pacific Railway Company appeared before this Commission urging the approval of said lease, and presenting a telegram from R. S. Lovett, chairman of the board of directors of the Union Pacific Railroad Company, to the attorneys of the Union Pacific Railroad Company and the Central Pacific Railway Company in San Francisco, in form as follows:

"The parties have practically agreed upon a modification of agreement of February 8, 1913, which eliminates most of the features deemed objectionable by the Railroad Commission or as to which the Commission imposed conditions. Circuit judges have expressed a willingness to grant hearing on modified plan on Saturday morning. Underwriting Syndicate expires on Saturday unless we obtain by that time decree of district court and all necessary approval of California Commission as hereinafter stated, namely:

*First*—Approval of lease of line from Tehama to Oregon boundary, form lease and provisions concerning same being unchanged from agreement of February 8, 1913, except by addition of provisions that valuation determined as provided in the agreement shall be subject to review by Commission.

*Second*—Sale of California portion of line from Weed to Klamath Falls and Natron at a price representing the cost of said portion of the line.

*Third*—A lease by the Central Pacific Railway Company to Union Pacific Railroad Company in the form proposed in the application filed with the Commission on February 19th, which covers all the property of the Central Pacific, except the lines north of Tehama. The modified agreement will eliminate all provisions as to the joint use of the Benicia line, the joint use of terminals and the trackage and running rights from Newark to Redwood and from Redwood to San Francisco, thus leaving for the Commission's approval only the three matters above mentioned. The

lease of the Central Pacific to the Union Pacific does not supersede the sale of the Central Pacific stock, but is required in addition thereto in order to secure the necessary consent of the French banks. The approval of the Commission as to valuation of the line north of Tehama may of course be reserved by the Commission for future action if the lease and sale of these lines are approved, subject only to the reserve power to review the valuation. But the approval of the lease of the Central Pacific to the Union Pacific must be given immediately and unconditionally. If the Commission will give its approval of the foregoing matter, there is a possibility that we may obtain the approval of the court on Saturday, but if the approval of the Commission and of the court are not obtained by Saturday, the Underwriting Syndicate is lost and the entire plan is defeated. Please take the matter up with the Commission at once and advise result. Special haste required, because in case we are to attempt to have a hearing in St. Louis on Saturday, representatives and revised papers must leave for St. Louis at six thirty, New York time, to-night."

At an informal hearing, the matter was presented to the Commission and objections to certain features of the revised plan were presented by attorneys for the Western Pacific Railway Company, which company was an intervenor in the main case. The Commission, after carefully considering the representations of the parties herein, and desiring not to impede a settlement of the matters arising out of the merger suit, so-called, will state generally what its attitude is with reference to this application. We cannot pass formally or specifically on the matter for the reason that the presentation which has been made to the Commission has been wholly inadequate to acquaint the Commission with the agreements which have been entered into or are to be entered into in connection with the matter.

We reiterate our adherence to all of the conditions set out in our main opinion and order in application number four hundred nine, and any promise of approval herein is subject to all of the conditions therein set out. The Commission will adhere to each of said conditions and to the principles underlying them.

Taking the telegram as interpreted by the attorneys for the applicants, we are willing to approve the matters contained in the first and second divisions thereof, these two propositions being in substantially the same form in which they were originally presented to this Commission.

We have heretofore, in our main and supplemental opinions, set out in full our objections to the sale of the stock of the Central Pacific to the Union Pacific. We likewise discussed the possible effect of the acquisition by the Kuhn-Loeb syndicate of the stock of the Southern Pacific now owned by the Union Pacific. Nothing has subsequently hap-



pened to cause us to change our opinion. We expressed the fear that the purchase of the Southern Pacific stock by the Kuhn-Loeb syndicate would result in the practical control of the Southern Pacific by stockholders of the Union Pacific so that there would in reality be but one agency in control of these two alleged or supposedly competing companies, thus entirely defeating the object sought to be brought about by the Supreme Court of the United States. We also expressed the fear that even if a complete disassociation were effected, the acquisition of the Central Pacific by the Union Pacific would result in breaking up a well constructed single system of railroads in this State into two disassociated and incomplete systems, neither of which would be adequate conveniently to serve the traffic needs of the State of California.

To these two important matters we respectfully call the attention of the federal court and of the attorney general.

These being matters over which we have no jurisdiction, we have contented ourselves by calling them to the attention of the Federal Government, which has the sole power to prevent the consummation of these arrangements in these respects. As we said in our former opinion, however, if after calling these matters to the attention of the Federal authorities, such authorities insist on the sale by the Southern Pacific to the Union Pacific of the Central Pacific stock, we will not be disposed to withhold our approval of those matters which come within our jurisdiction after they shall have been formally and completely presented in the usual manner, provided that no material changes appear in the plan thus to be presented.

If, then, the Federal authorities insist upon a sale of this Central Pacific stock, we see no reason why a lease of the property of the Central Pacific should not be had to the Union Pacific, which through stock ownership would control the policy of the road in any event, but we do not feel disposed to pass definitely upon any particular lease at this time. Subject to what is herein said we are willing to say that a lease substantially in the form presented in the application here under consideration will be approved in the event the Federal authorities require the sale of the Central Pacific stock to the Union Pacific. The approval of this lease, it should be specifically understood, shall not in anywise impair or change any of the conditions heretofore set out in the order in application number four hundred nine.

It is not our disposition to stand in the way of the substitution of the Union Pacific for the Central Pacific in the control of the property of the Central Pacific, in the event the Union Pacific is permitted to secure all of the stock of said Central Pacific. The grant of the lease under such circumstances will, in our opinion, be a mere matter of convenience, and will not add to the substantial control of the property which can be exercised through entire stock ownership.

We do not desire to quibble, and we desire to go on record with sufficient definiteness to enable both the parties to this agreement and the Federal authorities to determine just what our position is, so that any action which may be taken in contemplation of a modified agreement may be taken with full understanding of what to expect from this Commission. We have heretofore indicated our entire disapproval of any plan whereby the Union Pacific, through the Central Pacific, shall be given exclusive privileges by the Southern Pacific to which, in our opinion, as a competing line it is no more entitled than any other competing line. We have, however, indicated that any necessities which arise by reason of the fact that some of the facilities of the Southern Pacific and the Central Pacific are inextricably combined will be recognized by us. But there is certainly no reason why the Union Pacific through the Central Pacific at Sacramento should be treated by the Southern Pacific as a preferred connection as regards the short line of the Southern Pacific by way of Benicia to Oakland. We have absolutely no objection to a traffic arrangement whereby the Union Pacific traffic is turned over to the Southern Pacific at Sacramento and conveyed thence to San Francisco over the Benicia line, and the same may be said for Union Pacific traffic originating at bay points. Yet, if such an arrangement is desirable from the standpoint of the Southern Pacific, certainly it should be willing to perform a like service for the Western Pacific, or any other competing line, for a like payment, and the Union Pacific, desiring only that the service be performed for it for the stated compensation, of course can have no interest in preventing the Southern Pacific from making more money by performing for another line a like traffic service for adequate consideration. In this connection we call attention to the provisions of article twelve, section seventeen of the constitution of the State of California, which reads as follows: "Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad and shall receive and transport each the other's passengers, tonnage and cars without delay or discrimination."

We likewise respectfully call attention of the Federal authorities to the case decided by the Interstate Commerce Commission on February 10, 1913, entitled, *St. Louis, Springfield and Peoria Railroad et al. vs. Peoria and Springfield Union Railroad Company*, wherein the Interstate Commerce Commission, at least as far as terminals are concerned, took the same position that we here assume.

The Supreme Court wants these lines to be unmerged and we will prevent, if we can, combinations in such unmerging. As a condition to any approval which we may give to any matter for which our approval is required by law, the substance of our conditions respecting the Benicia

cut-off and the terminal facilities must be complied with. Therefore, any traffic arrangement which will, in our opinion, serve to evade our conditions heretofore imposed, and accomplish by indirection that which we have refused to approve when squarely presented, will be considered by us sufficient ground to warrant our withholding our approval of the lease.

We cannot understand why, in fairness to this Commission, the new traffic arrangements were not disclosed to us when this matter was presented. We assume, of course, that these roads, acting in good faith, expect to comply fully with the provisions of the constitution and statutes of California so far as applicable to their affairs, and it may be that our fear with reference to this matter is unfounded. If, as a matter of fact, the design of the proposed new traffic arrangements, the terms of which we do not know, is not to circumvent the previous decision of this Commission, then, of course, what we have to say herein will not at all interfere with the unmerging plan as amended. If, on the other hand, the design is to evade the effect of our former conditions, then we think we should prevent the new plan from being consummated if it is within our power to do so.

We cannot understand why absolutely open and frank dealings cannot be had with reference to these matters. We cannot conceive any reason why the Southern Pacific and the Union Pacific, in keeping with the mandate of the Supreme Court, can not actually unmerge, and why there should be any attempt to reserve to the Union Pacific an advantage or preference which it would not be given if it were dealing, so to speak, at arm's length with the Southern Pacific. Let us suppose a condition wherein the Southern Pacific owned the Benicia line from Sacramento to Oakland, and the Union Pacific owned all of the property of the Central Pacific, and that there were no entangling alliances whatsoever between the two corporations. Is it to be supposed that under those circumstances the Southern Pacific would have any reason for making the Union Pacific a preferred connection at Sacramento, and would it not desire to get on the best terms it could all of the traffic from any road at that point? It is in this aspect that we feel that the decree of the Supreme Court requires these roads to be considered, and we hope that the roads take the same position and that no attempt will be made to assume a different position by exclusive or preferential traffic arrangements.

As we have already said, we do not know the terms of this new plan, but according to the only information we have, gleaned from the press, the Union Pacific is to pay the same amount for the property as was contemplated in the original plan. If this be true, coupled with the statement of Judge Lovett before this Commission, that they were

buying two things, namely, first, certain property, and, second, certain exclusive privileges, and that unless they could get these exclusive privileges they would not pay the same amount for the property, we are certainly justified in the assumption, if the press reports are true, that the Union Pacific at least thinks it is getting the same thing by this alternative method which the Commission prevented it from getting by the former method. If our information is incorrect as to the price, this is the result of the failure to present to us the entire scheme.

Respectfully,

RAILROAD COMMISSION OF CALIFORNIA.

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DECISION No. 505.

BARBER ASPHALT PAVING COMPANY  
*vs.*  
SOUTHERN PACIFIC COMPANY AND PACIFIC ELECTRIC  
RAILWAY COMPANY.

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Case No. 371.

*Decided March 15, 1913.*

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ORDER OF DISMISSAL.

REPORT OF THE COMMISSION.

The Barber Asphalt Paving Company, complainant in this proceeding, having on March 11, 1913, made a written request to this Commission that the complaint in this proceeding be dismissed,

*It is hereby ordered* that the complaint in this proceeding be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of March, 1913.

## DECISION No. 506.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA, SHASTA AND EASTERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF SEVEN HUNDRED AND NINETY-SEVEN THOUSAND DOLLARS AND CAPITAL STOCK OF THE PAR VALUE OF ONE MILLION, SEVENTY-FIVE THOUSAND, SIX HUNDRED DOLLARS.

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Application No. 365.

*Decided March 17, 1913.*

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Applicant was incorporated January, 1913, with an authorized capital stock issue of \$600,000 to construct and operate a railroad between Anderson and Ingot, Shasta County, a distance of about 28½ miles, mainly for the purpose of affording cheaper transportation to and from the mine of the Afterthought Copper Company located at Ingot. It is the intention of applicant to purchase the Anderson and Bella Vista Railroad, a logging railroad operating between Anderson and Bella Vista, Shasta County, some 15.52 miles, to repair and reconstruct said system and extend it to Ingot. For these purposes and to provide funds for the payment of promotion and organization expenses, approval was asked to the issue of 20-year six per cent bonds in the amount of \$797,000 and \$1,075,600 capital stock.

Application granted upon certain express conditions relating to the transfer of the property to be acquired, applicant being given permission to issue \$349,000 stock and \$568,000 to be used for the above purposes in amounts as follows, to wit: (1) in payment for the property and system of the Anderson and Bella Vista Railroad in the amount of \$128,000 bonds and \$72,000 capital stock; (2) for the repair and reconstruction of said Anderson and Bella Vista Railroad \$100,000 bonds and \$56,250 stock, the said securities to be sold at not less than 80 per cent of their par value; (3) for the extension of the Anderson and Bella Vista Railroad from Bella Vista to Ingot \$340,000 bonds and \$191,250 stock, the said securities to be sold at not less than 80 per cent of their par value; (4) in full payment for all the organization and promotion expenses incurred by applicant capital stock in the amount of \$30,000.

*Pillsbury, Madison & Sutro, for Applicant.*

## REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application on the part of the California, Shasta and Eastern Railway Company for authority to issue bonds of the face value of \$797,000 and capital stock of the par value of \$1,075,600 for the purposes hereinafter specified.

Applicant was incorporated under the laws of this State in January, 1913, for the purpose of purchasing, constructing, operating and maintaining a railroad of standard gauge, to be operated by steam, electricity or other lawful motive power, for the carrying of passengers and freight thereon and thereover for hire between Anderson in

Shasta County, California, and Ingot, in the same county, a distance of approximately  $28\frac{1}{2}$  miles. The amount of capital stock authorized is six hundred thousand (\$600,000) dollars, consisting of six thousand (6,000) shares of the par value of one hundred (\$100) dollars each, of which shares three hundred and twenty (320) have been subscribed for. All the stock is common. No stock has been issued other than such shares as are necessary to qualify the directors. Applicant has no assets and no liabilities.

Applicant's incorporation was procured by the Afterthought Copper Company, which owns a zinc and copper mine at Ingot, distant some 12 1-10 miles beyond Bella Vista, which place is the terminus of the Anderson and Bella Vista Railroad. The Afterthought Copper Company desires that the Anderson and Bella Vista Railroad be extended to Ingot, so as to produce cheaper transportation to and from the company's mine. The Afterthought Copper Company's mine has been closed since December, 1907. The company has a capital stock of eight million dollars and claims to have some four hundred thousand tons of ore now in sight in the mine. It has asserted that the development of the mine has been handicapped and retarded by the lack of transportation facilities. The Afterthought Copper Company accordingly procured the incorporation of applicant for the purpose of purchasing the existing Anderson and Bella Vista Railroad, of improving said railroad so as to be suitable for heavy traffic and of extending the same from Bella Vista to Ingot.

I shall now consider separately the four main objects for which applicant asks authority to issue stock and bonds, viz., (1) the purchase of the Anderson and Bella Vista Railroad; (2) the repair and reconstruction of said railroad; (3) the construction and equipment of an extension thereof from Bella Vista to Ingot, and (4) the payment of promotion and organization expenses.

1. The Anderson and Bella Vista Railroad while a common carrier, is primarily a logging railroad. It runs from a connection with the railroad operated by the Southern Pacific Company at Anderson in Shasta County, in a general northeasterly direction, a distance of some 15.52 miles, to its terminus at Bella Vista. The railroad was constructed in 1897 by the Shasta Lumber Company at a cost, including right of way, of \$157,490.07, as shown by the books of the lumber company. The books of this company and of its successors show the expenditure of additional sums from year to year, for labor and supplies, amounting to \$159,134.65, so that the total book cost of the railroad, including all repairs, is some \$316,624.72. During the years 1897 to 1910 the sum of \$37,133.18, an entirely inadequate amount, was charged off for depreciation. The railroad is in a more or less dilapidated condition, and can not be operated for heavy traffic without extensive improvements in an

amount almost as great as the entire value of the railroad in its present condition. This railroad has been sold by its owner, J. E. Terry, to Afterthought Copper Company in consideration for the action of the copper company in securing a release to the extent of two hundred thousand dollars of a mortgage on the property of the Anderson and Bella Vista Railroad and of the timber lands of Mr. Terry, held by Captain Simpson. The documents in this transaction are all in escrow. The copper company intends to deed this railroad to the California, Shasta and Eastern Railway Company in return for such stocks and bonds of said railway company as this Commission may authorize for the purpose of purchasing the Anderson and Bella Vista Railroad, in case the amount so authorized is satisfactory. Applicant asks for authority to issue for the acquisition of said Anderson and Bella Vista Railroad bonds of the face value of \$237,000, and also capital stock equivalent to fifty per cent of the face value of the bonds, the bonds and stock to be sold together for ninety per cent of the par value of the bonds. The bonds are to be six per cent and twenty-year bonds, callable at any interest date at 105. In addition to the stock and bonds hereinbefore referred to, and to the stock and bonds which will hereinafter be referred to, applicant also desires to issue 6,771 shares of its capital stock at the rate of \$25 per share. In other words, applicant desires authority to issue capital stock, of the par value of \$500 with every bond of the face value of \$1,000, and in addition thereto, 6,771 shares of its capital stock.

As bearing on the value of the Anderson and Bella Vista Railroad, applicant presented an estimate prepared by Mr. John G. Little, which estimate shows a cost to reproduce the railroad new of \$352,769 and a present value of \$194,809. Included in these estimates are 10 per cent for engineering and supervision, 5 per cent for general and legal expenses, 8 per cent for interest and insurance and 10 per cent for contingencies. Mr. Little at the hearing also presented an estimate of certain items which were not included in his original estimate of the value of the Anderson and Bella Vista Railroad, and which he claims should have been added thereto, totaling \$8,224, reproduction value, and \$5,852, present value: about one third of this estimate is for loose material lying along the right of way. Mr. R. A. Thompson, this Commission's chief engineer, has presented an estimate of \$155,670.95 as representing the present value of the physical property of the Anderson and Bella Vista Railroad, including five (5) per cent for engineering and superintendence, one (1) per cent for legal expenses and five (5) per cent for interest during construction. It would seem that Mr. Little's percentages are higher than necessary in this case. The aggregate value arrived at by Mr. Thompson and Mr. Little, apart from the percentages, is almost identical, and is in the neighborhood of \$140,000. To this sum should be added such percentages for engineer-

ing and superintendence, legal expense, insurance, interest during construction, and possibly other intangible items as are proper. To be liberal, I shall assume that for the purpose of the issue of securities, the railroad has a present value of \$160,000, thereby taking care of any item of contingencies which may not have been covered in Mr. Thompson's estimate.

Applicant has made no contract for the sale of its stock or bonds, nor was it able to give an estimate of the amount for which it could reasonably expect to sell the same. Under these circumstances, I shall recommend that both bonds and stock be issued so as to net applicant not less than 80 per cent of their face value, this being the minimum amount hitherto authorized by this Commission. I shall recommend that applicant be authorized to issue to Afterthought Copper Company, in exchange for the property of the Anderson and Bella Vista Railroad, bonds of the face value of \$128,000. If these bonds are worth 80 per cent of their face value they will have a value of \$102,400. To realize the additional \$57,600, I shall recommend the issue of common stock of the par value of \$72,000, so that there will be outstanding against the property of the Anderson and Bella Vista Railroad, bonds of applicant in the face value of \$128,000 and capital stock of the par value of \$72,000.

2. Applicant desires also to reconstruct and improve the line of the railroad from Anderson to Bella Vista, so as to put it in condition for safe operation for the traffic which applicant expects to transport over it. It will be necessary to widen the embankments, to repair the Sacramento River bridge, to repair the trestles and culverts, to lay some 28,000 new ties, to install some 792 tons of new rails and fastenings, to install additional switches, to ballast the road, to make expenditures for buildings and to make other improvements. For these purposes applicant asks authority to issue bonds of the face value of \$150,000, together with capital stock of the par value of \$75,000. Applicant's engineer, Mr. Little, ascertained the cost of reconstruction and improvements by subtracting from his estimated reproduction value—new, amounting to \$352,769, his estimated present value of the railroad, viz. \$194,809, thus securing an estimate of \$157,960 for reconstructing and improving the railroad. Mr. Little's estimate includes over 33 per cent for overhead charges and intangible items.

Mr. Thompson estimates the amount of money required to rehabilitate the railroad from Anderson to Bella Vista as \$119,633.35, as follows:

|  |            |
|--|------------|
| Grading, widening embankments to 14 feet, 20,000 cubic yards at 20 cents ..... | \$4,000 00 |
| Repairing Sacramento River bridge.....   | 5,000 00   |
| Repairing trestles and culverts.....   | 14,337 00  |
| Ties, 28,000 at 60 cents.....  | 16,800 00  |
| Rails and fastenings, 792 tons at \$40.....                                    | 31,680 00  |



|  |             |
|--|-------------|
| Amount brought forward .....                   | \$71,817 00 |
| Switches, 9 at \$100 .....                     | 900 00      |
| Spikes, 26 tons at \$44 .....                  | 1,144 00    |
| Bolts, 5.5 tons at \$60 .....                  | 330 00      |
| Laying and surfacing 15.8 miles at \$500 ..... | 7,900 00    |
| Fencing, 15 miles at \$150 .....               | 2,250 00    |
| Cattle guards, 31 at \$20 .....                | 620 00      |
| Telephone lines, 15.5 miles at \$25 .....      | 387 50      |
| Ballasting, 15.5 miles, gravel, \$1,000 .....  | 15,500 00   |
| Depots and buildings .....                     | 4,500 00    |
| Fuel and water station .....                   | 2,500 00    |

|   |              |
|---|--------------|
| Total .....   | \$107,848 50 |
| Engineering, legal and incidental expense 10 per cent. .... | 10,784 85    |

|             |              |
|-------------|--------------|
| Total ..... | \$119,633 35 |
|-------------|--------------|

To be liberal, I shall assume that it will take \$125,000 to reconstruct and improve the railroad. I recommend that to secure this sum, applicant be authorized to issue bonds of the face value of \$100,000 and capital stock of the par value of \$56,250, to be sold at not less than 80 per cent of its face value. If it should hereafter develop that the amount necessary for reconstruction and improvement is in excess of \$125,000, applicant may apply to the Commission for authority to issue additional securities.

3. Applicant desires also to extend the line of the Anderson and Bella Vista Railroad from Bella Vista to Ingot, a distance of some 12.1 miles, together with an additional 1.5 miles of sidings and spur tracks. In connection with this portion of the application, applicant presented a revised estimate of its engineer, Mr. Little, totaling \$312,200, the summary of which is as follows:

|  |            |
|--|------------|
| Clearing .....                               | \$6,200 00 |
| Grading .....                                | 133,200 00 |
| Bridging and cribs .....                     | 21,600 00  |
| Culverts .....                               | 7,100 00   |
| Road changes and movement of buildings ..... | 6,500 00   |
| Track .....                                  | 70,300 00  |
| Ties .....                                   | 24,500 00  |
| Track laying .....                           | 8,800 00   |
| Ballast .....                                | 25,200 00  |
| Surfacing .....                              | 8,800 00   |

|  |              |
|--|--------------|
| Total of roadway, bridging and track ..... | \$312,200 00 |
|--|--------------|

Mr. Thompson presents the following estimate of cost of the extension from Bella Vista to Ingot:

|   |              |
|---|--------------|
| Grading and bridging, as per Little's original estimate ..... | \$142,100 00 |
| 1,186 tons steel rails at \$47.21 .....                       | 55,991 06    |
| 320 tons fastenings, braces, plates, etc., at \$50.00 .....   | 16,000 00    |
| 10 tons bolts at \$60.00 .....                                | 600 00       |
| 40,000 ties at 58 cents .....                                 | 23,200 00    |
| 25,000 B. M. switch ties at \$18.00 .....                     | 450 00       |
| 31,500 cubic yards ballast at 50 cents .....                  | 15,750 00    |
| 12.8 miles laying and surfacing at \$1,000.00 .....           | 12,800 00    |

|             |              |
|-------------|--------------|
| Total ..... | \$266,891 06 |
|-------------|--------------|

|   |                     |
|---|---------------------|
| Amount brought forward .....                  | \$266,891 06        |
| 1 mile additional siding.....                 | 12,000 00           |
| 2 water stations.....                         | 3,200 00            |
| Depots and buildings.....                     | 4,500 00            |
| Telephone lines .....                         | 3,000 00            |
| Rights of way and terminals (estimated).....  | 10,000 00           |
| <b>Total</b> .....                            | <b>\$299,591 06</b> |
| Legal and engineering, 6 per cent.....        | 17,975 46           |
| Equipment as per estimate.....                | 40,826 00           |
| <b>Total</b> .....                            | <b>\$358,392 52</b> |
| Interest during construction, 3 per cent..... | 10,751 77           |
| Contingencies, etc., 5 per cent.....          | 18,457 20           |
| <b>Grand total</b> .....                      | <b>\$387,601 49</b> |

Mr. Thompson states that the item for equipment ought really to be double that included in his estimate. While Mr. Thompson's total estimate is considerably in excess of Mr. Little's, it should be borne in mind that Mr. Thompson's estimate is a complete estimate while Mr. Little's is only a partial estimate. I shall assume a total cost of \$425,000 for the construction and equipment of the extension from Bella Vista to Ingot, of which amount \$80,826 is for equipment, and shall recommend that bonds of the face value of \$340,000 and capital stock of the par value of \$191,250 be authorized to be issued to complete this extension.

4. Applicant also asks authority to issue securities in the sum of \$50,000 for organization and promotion expenses. As this Commission said in Application No. 231, being application of the Central California Gas Company:

"The Commission is of the opinion that promotion and organization expenses, honestly and wisely incurred, are as necessary to the success of a public utility and are as properly subjects of capitalization as the cost of the component parts of the utility's physical plant or system, and that the same should be paid for, in cash, where possible, at their reasonable value to the utility. Wherever possible, the moneys actually spent on these items should be ascertained, and reimbursement made for them. While it is not always easy to estimate the value of a promotor's services, inquiry should be made as to the amount of time which he has devoted to the organization of the utility and to the reasonable value of work such as that which he performs during that time. A public authority, in estimating the value of such services should be liberal, so that men of ability may be attracted to the development of new utility enterprises, where needed for the development of the state. The need for a liberal policy in this regard is particularly apparent in states like California, in which there is still a wide field for legitimate new public utility development. It may well be that in addition to a reasonable compensation for the time devoted to the work, the promoter should be allowed an additional remun-

eration to compensate him for his risk of failure and the use of such money as he may have invested in the organization and promotion of the enterprise. In this, as in other respects, this Commission believes that the state of California should deal liberally with those who, by the establishment of utility enterprises, are aiding in the legitimate development of the state."

Applicant claims that the sum of \$27,000 was spent for surveys and for other corporate purposes, and that this amount is not included in any of the estimates of its engineer. Of this amount the sum of \$17,000 was spent for surveys and grading, which will not be utilized by applicant. The Afterthought Copper Company has also made one payment of \$6,000 for interest on its note of \$200,000 given in payment for the Anderson and Bella Vista Railroad. Applicant also alleges that various lawyers and engineers came to Shasta County from Indiana to examine the property of the Afterthought Copper Company, and also inquire into the feasibility of acquiring the Anderson and Bella Vista Railroad and extending the same to Ingot. Applicant was unable to state what fees, if any, were paid to these men or what their services were worth, or what proportion of their time is properly chargeable to applicant and what proportion to the Afterthought Copper Company. On the facts of this case, I find that a reasonable payment for promotion and organization expenses would be 300 shares of applicant's capital stock, and I recommend that applicant be authorized to issue this amount of capital stock in full payment for all organization and promotion expenses.

The Commission made some investigation into the question whether or not the applicant's line of railroad, if constructed, would yield a return large enough to pay for operation and maintenance, depreciation and fixed charges. Applicant's witnesses estimated that some 15 tons of coke and 25 tons of silicious ore would be transported to the mine of the Afterthought Copper Company each day, and that some 60 tons of zinc and copper would be shipped therefrom daily. The largest portion of applicant's traffic would be lumber from the lands of Mr. J. E. Terry and adjacent owners, of which commodity applicant expects to ship on an average of 260 tons per day. Deposits of lignite or semi-bituminous coal lie along the line of the proposed railroad. The present Anderson and Bella Vista Railroad runs through a farming community. It is expected that the railroad, when completed, will derive considerable additional traffic from the valleys lying beyond Ingot, such as Burney Valley, the Fall River Valley and Goose Valley. I do not feel that I have on hand evidence sufficient to warrant me in saying definitely whether or not the line of railroad when completed will be able to make the necessary earnings to pay operating expenses and maintenance, depreciation and fixed charges. There is consider-

able evidence, however, to the effect that these earnings will be realized. I accordingly recommend that in this, as in all cases of developing the State by the construction of new utilities, where there is a reasonable doubt the benefit of the doubt, if any, be resolved in favor of the enterprise.

The effectiveness of the order should be made conditioned on the conveyance by the Afterthought Copper Company of the Anderson and Bella Vista Railroad to the California, Shasta and Eastern Railway Company, the present applicant. I find that the moneys to be derived from the sale of the capital stock and bonds hereby authorized is not in whole or in part reasonably chargeable to operating expenses or to income, and submit herewith the following form of order:

**ORDER.**

California, Shasta and Eastern Railway Company having applied to the Railroad Commission of the State of California for an order of the Commission authorizing the issue by said company of bonds to the amount of \$797,000, face value, said bonds to be payable on the first day of January, 1933, and to bear interest at the rate of 6 per cent per annum, payable semiannually, and secured by a mortgage or deed of trust upon all the property of the company, and also of its capital stock of the par value of \$1,075,600, and also for an order authorizing the execution and issue by said company of said mortgage or deed of trust and a hearing having been held upon said application, and the Commission finding that the money to be procured by the issue of the bonds and capital stock hereinafter authorized is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of its facilities and the improvement and maintenance of its service, as hereinafter specified, and that the purposes for which said money is to be expended is not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* as follows:

1. California, Shasta and Eastern Railway Company is hereby authorized to execute and deliver its mortgage or deed of trust, to be dated as of the first day of January, 1913, to secure a possible issue of bonds in an amount to be hereafter determined and approved by this Commission, said bonds to bear interest at the rate of 6 per cent per annum, payable semiannually, upon the terms and conditions in said mortgage or deed of trust set forth and contained, said mortgage or deed of trust to be substantially in the form of Exhibit "J," attached to the petition in this proceeding. Upon the execution thereof, applicant shall file with this Commission a certified copy of said mortgage or deed of trust, as executed. Said company, however, shall have no right

or authority to issue any bonds pursuant to the terms of said indenture except as hereafter authorized by the Commission.

2. California, Shasta and Eastern Railway Company is hereby authorized to issue \$128,000, face value, of principal of bonds of said company, maturing the first day of January, 1933, bearing interest at the rate of 6 per cent per annum, payable semiannually, on the first day of July and of January of each year until payment of the principal of said bonds, under and in pursuance of the terms of the mortgage or deed of trust heretofore in section 1 of this order authorized to be issued, and also \$72,000, par value, of its capital stock, in payment for the conveyance to said railroad company by the Afterthought Copper Company of what is known as the Anderson and Bella Vista Railroad.

3. California, Shasta and Eastern Railway Company is hereby authorized to issue \$100,000, face value, of principal of its said bonds, and \$56,250, par value, of its capital stock on the following conditions and not otherwise, to wit:

(a) California, Shasta and Eastern Railway Company shall sell said bonds and said capital stock so as to net said company not less than 80 per cent of the face value of the bonds, plus accrued interest, and not less than 80 per cent of the par value of the stock.

(b) The proceeds from the issue of said bonds and of said stock shall be applied only to the repair and reconstruction of said Anderson and Bella Vista Railroad for the purposes and in amounts not to exceed those set forth in the applicant's petition.

4. California, Shasta and Eastern Railway Company is hereby authorized to issued \$340,000, face value, of principal of its said bonds, and also \$191,250, par value, of its capital stock, on the following conditions and not otherwise, to wit:

(a) California, Shasta and Eastern Railway Company shall sell said bonds and said capital stock so as to net said company not less than 80 per cent of the face value of the bonds, plus accrued interest, and not less than 80 per cent of the par value of the stock.

(b) The proceeds from the issue of said bonds and of said stock shall be applied only for the purpose of extending the line of said Anderson and Bella Vista Railroad from Bella Vista to Ingot in Shasta County, California, and in amounts not to exceed those specified in the revised estimate of grading, bridging and track, prepared by John G. Little, dated February 25, 1913, and filed in this proceeding, including not to exceed the amount of \$48,000 for the item of overhead percentages and \$80,826 for equipment.

5. California, Shasta and Eastern Railway Company is hereby authorized to issue \$30,000, par value, of its capital stock in full payment for all the organization and promotion expenses incurred by the company.

6. California, Shasta and Eastern Railway Company shall keep sep-

arate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the bonds and stock hereby authorized to be sold, and on or before the twenty-fifth day of each month, the company shall make verified reports to the commission, stating the sale or sales of said bonds and stock during the preceding month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as applicable is made a part of this order.

7. This order is subject to the express condition precedent that the property of the Anderson and Bella Vista Railroad shall be conveyed to California, Shasta and Eastern Railway Company concurrently with or before the said company may issue any of the bonds or stock in this order authorized to be issued.

8. The effectiveness of this order is subject to the express condition precedent that applicants shall first have paid the fee specified in section 57 of the Public Utilities Act.

9. The authority hereby given to issue bonds and stock shall apply only to bonds and stock issued by said company on or before the first day of March, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of March, 1913.

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DECISION No. 507.

JAMES P. GLASS

*vs.*

DEL MAR LIGHT AND POWER COMPANY.

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Case No. 326.

*Decided March 17, 1913.*

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Defendant, a subsidiary corporation, was organized for the purpose of supplying water for domestic and irrigation purposes to residents upon certain lands of South Coast Land Company at Del Mar. The source of supply is certain water bearing lands about six miles from Del Mar held under lease by the land company upon condition that not to exceed fifty miner's inches of water should be pumped during any twenty-four hours. The operation of defendant has not been confined to supplying consumers residing on property of the land company. Residents on other land are served and under the lease defendant also supplies water to the lessor of the land and to a railroad for station needs.

Complainant, owning a lot in the Del Mar Heights tract, claiming that defendant is a public utility, petitioned for an order requiring defendant to convey to his lands a sufficient supply of water for complainant's use at such rates and upon such conditions as the Commission should deem just and reasonable, and offered in case the water is delivered at the boundary of the Del Mar Heights tract, to incur all expense subsequent to the delivery of the water to said point. Defendant's objections are principally threefold: (1) that the building restrictions in the Del Mar Heights tract are much less stringent than those on its own tracts, and that defendant objects to furnishing water to what may be considered a rival tract; (2) that there is not sufficient water for supplying any land in Del Mar Heights tract in addition to the land in its own tracts; (3) that it can not, with its present system, deliver water to any portion of the Del Mar Heights tract.

*Held*, Defendant is a public utility and as such can not refuse to supply a person with water simply because it does not like that person or his way of doing business or because it may consider him as a rival in some other business which owners of the utility conduct. Any other conclusion would enable a water utility to pick out the persons whom it is willing to supply and to supply its friends and refuse to supply all others.

*Held*, Where a water company has only a limited supply of water, either the utility itself or some public authority must have the right to limit the use of that water within a specified area: *Tyndale Palmer vs. Southern California Mountain Water Company*, Case No. 261, cited. Where a water company has been organized as a public utility by the owners of a tract of land for the purpose, primarily, of developing that tract, and where the water company thereafter makes arrangements with the owners of water held in private ownership, as is the fact in this case, and water is developed, the owners of the land in question should certainly have within reasonable limits the first use of the water so developed. Accordingly, if it appeared in this case that all the water which the water company may develop under its contract, and such additional water as it may secure from the lessors of the land, in case such additional water may be developed, is necessary for the reasonable development of the lands of the South Coast Land Company within a reasonable period of time, this Commission would not compel defendant to supply water to outsiders. On the other hand, if the water of which defendant may avail itself is sufficient for the reasonable development of the South Coast Land Company's property within a reasonable time and there remains additional water to which the defendant is entitled not necessary for such purposes, this Commission will not undertake to stop the development of Del Mar and its vicinity by failing to direct defendant, a public utility, to do its duty to lands other than those owned by the South Coast Land Company.

*Held*, The engineering question of delivering water to or near the northern boundary of Del Mar Heights tract is a simple one, all parties having agreed that it is possible to lay a pipe line from defendant's tanks on Inspiration Point through certain of defendant's lands which are being developed to said boundary line, a distance of about 4,300 feet. Petition granted, the cost of constructing the main to be borne equally between the parties and the price for water used by plaintiff being fixed at twenty-five cents per thousand gallons.

*George H. Woodruff*, for Complainant.

*Edward Kuster*, for Defendant.

#### REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

The complainant in this case alleges, in effect, that complainant is the owner of lots 11, 12 and 13 in block 40, in what is known as the Del Mar Heights tract, located at Del Mar, San Diego County, California; that

the defendant is a public utility supplying water to the town of Del Mar; that defendant is now selling and distributing water to all persons living in Del Mar except complainant; that complainant has demanded of defendant that it supply water to him but that defendant has refused to do so; that complainant accordingly desires this Commission to make an order compelling defendant to convey to complainant's lots a sufficient supply of water for complainant's use at such rates and upon such conditions as the Commission may deem just and reasonable.

Defendant's answer alleges, in effect, that defendant is a subsidiary corporation of the South Coast Land Company, which company has bought extensive properties at Del Mar, and that defendant was organized for the purpose of supplying water in the development of said lands; that defendant has entered into a contract with the Santa Fe Land Improvement Company for an amount of water not to exceed fifty miner's inches in each twenty-four hours, and that defendant has not sufficient water to supply complainant; that the lands of complainant lie at a higher elevation than defendant's water system, and that such lands can not be reached by defendant's water system unless remodeled at a prohibitive cost; that the real object of the present proceeding is to secure water for the entire Del Mar Heights tract; and that it would be unjust to compel defendant to remodel and extend its system at great expense and divert its water for unreasonable distances to an undeveloped tract to the deprivation and injury of the land for whose benefit the water was originally developed and the water system constructed.

South Coast Land Company was incorporated February 23, 1906, and shortly thereafter acquired the townsite of Del Mar, together with other acreage in the vicinity. Those portions of this tract which are available for use, have been gradually subdivided until, at the present time, almost all the land available for building purposes has been subdivided. The total number of lots in these subdivisions is 2,100. The South Coast Land Company early looked around for a supply of water for this land, and finally, on January 4, 1908, entered into a contract with the Santa Fe Land Improvement Company, which company owns what is known as the San Dieguito ranch, some six miles northeast of Del Mar, on both sides of the San Dieguito River, under which contract the Santa Fe Land Improvement Company leased to the South Coast Land Company for the period of twenty years, so much of the property as might be necessary for the sinking of wells thereon by the lessee. It was stipulated that lessee should not, during any twenty-four hours, pump in excess of fifty miner's inches of water.



The lessee also agreed to pump for the lessor a maximum of 50,000 gallons of water during each twenty-four hours for the lessor's use on its ranch, and to furnish to the Atchison, Topeka and Santa Fe Railway Company, at its railway station at Del Mar, such water as might be needed for railroad use, for the park on the grounds surrounding the station and for its railroad section and bunk houses, but not for the railroad company's locomotive engines.

The lessor expressly reserved the right to sink as many wells on its ranch as it might from time to time deem necessary for its own use. The lessor has now planted a considerable portion of its ranch to alfalfa, and during the irrigating season pumps water from eight wells, which are located in a small pocket near the mouth of the San Dieguito River, some 300 feet easterly from defendant's wells.

Shortly after the date of the contract between the South Coast Land Company and the Santa Fe Land Improvement Company, the South Coast Land Company, in February, 1908, effected the incorporation of the Del Mar Water, Light and Power Company (hereinafter referred to as the water company), the defendant in this proceeding. The articles of incorporation give the water company power, among others, to sell and distribute water for domestic, irrigation and other purposes, to carry on the business of a water company, and also to manufacture, generate, furnish and sell electric, light, heat and power. The principal place of business is the town of Del Mar, but no territorial limit to the water company's services is delimited in the articles. Mr. Keller, president of the water company, testified that the primary motive for organizing the water company was to supply water, light and power to persons who might buy property from the South Coast Land Company.

The water company, in addition to supplying some twenty-four consumers on property bought from the South Coast Land Company, and the hotel, garage and power house owned by said company, also supplies water to some seventeen consumers—being all the users of water—living in what is known as the "old town" of Del Mar, on land not purchased from the South Coast Land Company, and has furnished water for highway construction and for the use of contractors, and a relatively insignificant amount to farmers in barrels. Mr. Keller testified that he considered the water company to be a public utility, and the evidence establishes the correctness of this view. Defendant laid some stress on the contention that defendant had held itself out as serving only "Del Mar." The Del Mar Heights tract, in which plaintiff's lots are located, is practically surrounded on the north, west and south by land belonging to the South Coast Land Company, and I find that any definition of "Del Mar" which is broad enough to include the lands of the South Coast Land Company, is also broad enough to include the Del Mar Heights tract.

The water company acting under the contract with the Santa Fe Land Improvement Company, has sunk three wells some 300 feet to the

west of the wells of the Santa Fe Land Improvement Company, in the pocket hereinbefore referred to near the mouth of the San Dieguito River. Of these wells, two are in use, the third not being pumped because the water is muddy. At these wells is situated what is known as pumping plant No. 1, which pumps the water and forces it through a ten-inch riveted steel pipe about one mile west to a sump, where is located pumping plant No. 2. The function of pumping plant No. 2 is to pump water for use by the Santa Fe Land Improvement Company, in accordance with the terms of the contract. From the sump at pumping plant No. 2 the water is led through a ten-inch pipe, principally of vitrified sewer pipe, some five miles in a general westerly direction to another sump at what is known as pumping plant No. 3. This plant is used as a boosting station to lift the water to a concrete reservoir at Del Mar, with a capacity of 175,000 gallons, located at an elevation of about 210 feet above sea level. From this reservoir water is supplied through a distributing system to the lower zone of Del Mar. Pumping plant No. 4, located at this reservoir, lifts the water through a four-inch pipe to two 12,000-gallon wood stave tanks located on a tower on what is known as Inspiration Point. The elevation of the bottom of these tanks is 351 feet. These tanks supply four or five houses which are situated in what might be termed the higher zone of Del Mar. These tanks are the highest source of distribution possessed by the water company.

Complainant's lots are located at an elevation of about 400 feet, and are a part of the Del Mar Heights tract. This tract contains approximately 200 acres, subdivided into 780 lots, and adjoins the South Coast Land Company's Arden Heights Tract No. 6 on the south. The northerly boundary of the Del Mar Heights tract is located about 4,300 feet south from the high service tanks hereinbefore referred to.

The South Coast Land Company has heretofore subdivided and placed on the market five tracts known as Arden Heights tracts Nos. 1, 2, 3, 4 and 5. It has now subdivided, and is about to put on the market, what is known as Arden Heights Tract No. 6, which tract, as heretofore stated, adjoins the Del Mar Heights tract on the north. In order to enable prospective purchasers of property in Arden Heights Tract No. 6 to secure water, it will be necessary to lay a main south through the tract from the tanks on Inspiration Point. Plaintiff asks that he may secure water from this pipe and offers, in case the water is delivered therefrom to or near the northern boundary of the Del Mar Heights tract, to pump it up to his lots and to incur all expense subsequent to the delivery of the water to said point.

Defendant's objections are principally threefold:

- (1) Defendant objects to the fact that the building restrictions in the Del Mar Heights tract are much less stringent than those on its own tracts, and objects to furnishing water to what may be considered a rival tract.

(2) Defendant claims that there is not sufficient water for supplying any land in Del Mar Heights tract in addition to the lands in its own tracts.

(3) Defendant claims that it cannot, with its present system, deliver water to any portion of the Del Mar Heights tract.

The first objection can not have weight with this Commission. A public utility can not refuse to supply a person with water simply because it does not like that person or his way of doing business, or because it may consider him as a rival in some other business which the owners of the utility conduct. Other conclusion would enable a water utility to pick out the persons whom it is willing to supply, supplying its friends and refusing to supply all others.

The second objection, namely, the adequacy of defendant's supply of water, raises the most important question in the case. As was said by this Commission in the case of *Tyndale Palmer vs. Southern California Mountain Water Company*, decided January 21, 1913, where a water company has only a limited supply of water, either the utility itself or some public authority must have the right to limit the use of that water within a specified area.

Where a water company has been organized as a public utility by the owners of a tract of land for the purpose, primarily, of developing that tract, and where the water company thereafter makes arrangements with the owners of water held in private ownership, as is the fact in this case, and water is developed, the owners of the land in question should certainly have, within reasonable limits, the first use of the water so developed. Accordingly, if it appeared in this case that all the water which the water company may develop under its contract, and such additional water as it may secure from the Santa Fe Land Improvement Company, in case such additional water may be developed, is necessary for the reasonable development of the lands of the South Coast Land Company within a reasonable period of time, this Commission would not compel the defendant to supply water to outsiders. On the other hand, if the water of which defendant may avail itself is sufficient for the reasonable development of the South Coast Land Company's property within a reasonable time, and there remains additional water to which the defendant is entitled, not necessary for such purposes, this Commission will not undertake to stop the development of Del Mar and its vicinity by failing to direct defendant, a public utility, to do its duty to lands other than those owned by the South Coast Land Company.

There is a conflict in the evidence with reference to the amount of water available on the Santa Fe Land Improvement Company's ranch near the mouth of the San Dieguito River. Mr. C. S. Alverson, testifying for the complainant, stated that in his opinion 400 miner's inches could be pumped from the river bed. He based this statement largely on the claim that there was a large underground flow coming

down the San Dieguito River, and this opinion was based on his experience with reference to other streams in San Diego County. There is no satisfactory testimony that the conditions as to the San Dieguito River are the same as those with reference to other streams to which Mr. Alverson referred. His testimony was apparently not based on the size or storage capacity of the basin from which the water is being pumped, but more largely on the theory of a continuous underground flow.

Mr. F. C. Finkle, testifying for the defendant, stated that in his opinion the gravel beds hold 158.5 inches of water for one year, and that the limit of safety has been reached with the present draft of water.

Because of the confusion as to this very material element in the case, the Commission directed Mr. G. S. Strout, its assistant hydraulic engineer, to make a thorough investigation into the situation. Mr. Strout made a careful examination of that portion of the basin from which fresh water may safely be pumped, and testified that the surface area from which fresh water may be pumped amounts to about 290 acres. Considering that the river sands have a porosity of 30 per cent of their volume, that the available depth of draft is slightly below sea level, and that the upper five feet of the sands is not available on account of evaporation and recharging, Mr. Strout estimated a storage of 2,610 acre feet. With a draft on the gravels of 110 miner's inches for irrigation from the Santa Fe Land Improvement Company's wells for seven months during the year, and an average of 35 miner's inches for domestic use in Del Mar, the total yearly draft would be 1,425 acre feet. Mr. Strout also estimates an inflow from the channel of the stream above amounting to 275 acre feet. His results for one year were a total of 2,885 acre feet, from which about 1,425 acre feet could be pumped per year on the basis hereinbefore stated. Mr. Strout concluded that there is available for the water company the full fifty miner's inches covered by the contract.

While the evidence on this point is conflicting, I am convinced that the water company may safely pump at least the fifty miner's inches which are specified in its contract with the Santa Fe Land Improvement Company, and shall so assume in this opinion.

The next important question is as to the amount of water which is now being used by the water company. Mr. Strout's investigation shows that each portion of defendant's plant is at present so constructed that it can handle the full fifty inches, with the exception of the vitrified pipe line running between pump No. 2 and pump No. 3. Because of the fact that this pipe line is constructed of cement, and has weak joints so that it can not well withstand pressure, a maximum of only about 28.2 miner's inches of water can be delivered through this pipe. Far less than all of the water, however, which can be led through this pipe, has

actually been used by the water company. This Commission has been unable to secure a record of the amount of water actually pumped by defendant for a period of more than two months. The data submitted in this respect covers the month of July and a portion of the month of August, 1912, and gives an average of daily pumping for a period of forty-seven days of 7.4 hours per day. Considering the amount pumped as being 28.2 miner's inches, we find that the present system during those two months, which months may fairly be regarded as months of maximum use, delivered only 17.2 per cent of the fifty miner's inches to which the water company was entitled under its contract.

We have had no complete record of the water consumed for the reason that the larger consumers, such as the hotel, bathhouse, power house, and some of the larger residences, were not metered at the time of the hearing. The forty-one other consumers, however, were metered, and the record of their consumption for the twelve months of 1912, as shown by defendant's own records, is as follows:

| Month.          | Water recorded<br>in gallons. |
|-----------------|-------------------------------|
| January .....   | 59,000                        |
| February .....  | 86,000                        |
| March .....     | 45,000                        |
| April .....     | 70,000                        |
| May .....       | 100,000                       |
| June .....      | 202,000                       |
| July .....      | 197,000                       |
| August .....    | 236,000                       |
| September ..... | 172,000                       |
| October .....   | 139,000                       |
| November .....  | 134,000                       |
| December .....  | 122,000                       |

The record for the month of July, 1912, is as follows:

|                            |                   |
|----------------------------|-------------------|
| Total water pumped.....    | 3,350,000 gallons |
| Total water metered.....   | 197,000 gallons   |
| Total water unmetered..... | 3,153,000 gallons |

The unmetered water represents not merely the large uses of the hotel, bathhouse and power house, but also the street sprinkling and other uses and leakage.

It now becomes necessary to determine the amount of water which would be necessary to take care of the lands subdivided by South Coast Land Company. Taking the month of August, 1912, with a consumption of 236,000 gallons for forty-one consumers, gives an average monthly consumption per tap of 5,756 gallons, or a daily consumption of 185 gallons. On this basis one miner's inch of water, apart from leakage, would supply 70 taps.

The South Coast Land Company claims to have 2.100 lots subdivided. On the basis of 70 taps to the miner's inch, and on the assumption that each of the 2.100 lots is using water, it would take 30 miner's

inches of water to supply the entire subdivided tract, including Arden Heights Tract No. 6. We then have the following table based on the figures for July, 1912:

|   |                      |
|---|----------------------|
| Present maximum metered consumption per day-----  | .51 miner's inches   |
| Present maximum unmetered consumption per day---- | 8.10 miner's inches  |
| Balance needed for entire tract-----              | 29.49 miner's inches |
| Total -----                                       | 38.10 miner's inches |
| Balance available—11.90 miner's inches.           |                      |

From the above table it appears that if each of the 2,100 lots of the South Coast Land Company were sold and settled upon and using water, 11.9 miner's inches of water, less leakage, would still be available from defendant's fifty inches, for increased street sprinkling purposes and increased demands from the town's possible industrial features.

The assumption upon which this computation is founded is based on one house on each of the 2,100 lots and will probably never be realized. Mr. Keller stated that he would be disappointed if his company did not have 175 to 200 houses on the tract within the next four years. On the basis of one miner's inch to 70 taps, 200 houses would require only 3 miner's inches, to which should be added the leakage and the increase in public uses. It is clearly evident that a very large portion of the defendant's present water supply will not be called upon for use on the property of the South Coast Land Company for many years to come, and will be available for other uses.

The Del Mar Heights tract, as already said, contains about 780 lots. On the basis of 70 taps to the miner's inch and of one tap on each lot, it would take only 11.14 miner's inches of water, plus leakage, to supply the entire tract if every lot were built upon. To this amount must be added the water needed for public uses. Based on the acreage, with only one miner's inch to fourteen acres, it would require fourteen miner's inches to supply the tract, without taking into consideration public or industrial use of water. I am convinced that it will be many years before any considerable portion of the Del Mar Heights tract is built up, and that for many years a maximum of three or four miner's inches will be sufficient to supply the entire tract.

The engineering question of delivering water to or near the northern boundary of Del Mar Heights tract is a simple one. There was some conflict of testimony as to the exact location of the pipe, but all parties agreed that it is feasible to lay a pipe line from the tanks on Inspiration Point, through Arden Heights No. 6, to or near the northern boundary of Del Mar Heights tract. The distance from the tanks is about 4,300 feet. The South Coast Land Company, shortly after Arden Heights Tract No. 6 is placed on the market, will have to lay a pipe line through that tract for its own purposes. The pipe line so laid can

readily be used to supply water for use on plaintiff's property. Plaintiff can then pump the water from the point of delivery to his own property, as he has agreed to do.

Assuming a length of pipe 4,300 feet, the cost laid will vary from \$600 to \$1,205, depending upon the size of the pipe. A two-inch standard screw pipe would cost about \$945 and a four-inch riveted steel pipe about \$1,205.

From the foregoing resume of the facts in the case, it is evident that the water company may pump the full fifty miner's inches of water to which it is entitled under the contract, and that this amount of water will not be necessary for its own purposes for many years to come. While granting to the full, for the purposes of this case, that the South Coast Land Company has the first right to this water for its own lands, the facts of this case show that the company does not need all the water for its own lands, and that there is sufficient water remaining so as to enable the defendant safely to deliver water to the plaintiff.

As the South Coast Land Company might not need the pipe line throughout the entire extent of its Arden Heights No. 6 tract, at least for some time, it would not be fair to the defendant company to compel it to bear the entire cost of the installation of this pipe line, and on the facts of this case, I am of the opinion that the defendant company should construct this pipe line, but that one half of the cost should be borne by plaintiff. If other residents of Del Mar Heights tract later derive water through the same source, plaintiff may call upon them to share with him the outlay which he has made.

The defendant's duty in the premises will cease with the delivery of the water at or near the northern boundary of the Del Mar Heights tract. From that point all further expenses will be borne by plaintiff and by those who may thereafter use the water on the Del Mar Heights tract.

Defendant is at present delivering water at the rate of twenty-five cents per thousand gallons. This will be the price which plaintiff will be directed to pay for the water delivered for his use. Defendant's revenue will in this way be increased without a corresponding increase in its operating expenses.

I submit herewith the following form of order:

**ORDER.**

A public hearing having been held in the above entitled proceeding, and evidence having been introduced by all parties, and the Commission being fully advised in the premises, the Commission makes the following findings of fact:

1. We find as a fact that defendant Del Mar Water, Light and Power

Company is owning, controlling, operating, and managing a water system for compensation within this state.

2. We find as a fact that defendant may reasonably take from the sands of the San Dieguito River the fifty (50) miner's inches of water to which it is entitled under its contract with the Santa Fe Land Improvement Company.

3. We find as a fact that the maximum consumption of water delivered by defendant per day has hitherto been 8.61 miner's inches, or thereabouts.

4. We find as a fact that defendant company will not within a reasonable time require said fifty (50) miner's inches of water for use on the lands owned by the South Coast Land Company, and that it will have on hand an additional supply of water in such an amount that it can reasonably and safely supply plaintiff in this proceeding.

5. We find as a fact, that with its present plant, defendant may reasonably deliver such water to a point at or near the north boundary of the Del Mar Heights tract, and that defendant's present plant will be adequate for a number of years to come to supply both such demand as may be made upon said plant by persons buying property from the South Coast Land Company and persons living in what is known as old town of Del Mar, and other persons who may settle on Del Mar Heights tract.

6. We find as a fact that such water may be so delivered without any addition to defendant's present plant other than the pipe line hereinafter referred to.

Basing its conclusion upon the foregoing findings of fact, and upon the further findings found in the opinion which precedes this order,

*It is hereby ordered* as follows:

1. Del Mar Water, Light and Power Company is hereby ordered to deliver from its own water system, water for plaintiff's use at or near the northern boundary of the Del Mar Heights tract, and thereafter to continue to deliver such water at a compensation of twenty-five (25) cents per one thousand (1000) gallons so delivered.

2. The entire expense of placing such water upon plaintiff's land from such point of delivery shall be borne by plaintiff.

3. Del Mar Water, Light and Power Company shall within twenty (20) days after the effective date of this order, construct from its tanks on Inspiration Point, a pipe line of size sufficient to accommodate the plaintiff, running to said point of delivery. Upon the completion of said pipe line and before defendant shall be obliged to deliver water for plaintiff's use, plaintiff shall pay to defendant one half ( $\frac{1}{2}$ ) the reasonable cost of the construction of such pipe line. Such pipe line shall thereafter be maintained at defendant's sole cost. The defendant shall



confer with plaintiff as to the size of such pipe line, and the same may be laid so as to accord, in so far as possible, with the uses of Arden Heights Tract No. 6.

4. This order shall go into effect in twenty (20) days from and after its date.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of March, 1913.

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DECISION No. 508.

HUNT BROTHERS COMPANY  
*vs.*  
SOUTHERN PACIFIC COMPANY

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Case No. 276.

*Decided March 18, 1913.*

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Complainants allege that a rate of \$8.70 on sugar from San Francisco to Exeter is unreasonably high. In fact, the rate at no time was \$8.70, but previous to the Commission's decision in the San Joaquin Valley Rate Case (Case No. 116) was \$8.90. This rate was reduced by the decision in that case to \$7.60, and later, by arrangement with the carriers, to \$6.20. Upon learning of this at the time of the hearing, the testimony of complainants was directed to an effort to show that \$6.20 was an unreasonably high and discriminatory rate. To do this comparisons of rates were made.

*Held*, The rates used for comparative purposes are not analagous to the rate complained of. A comparison of rates to be valuable or of weight with the Commission must be made under circumstances which are as nearly similar to the rates complained of as possible. A mere comparison of two or three rates made under entirely different circumstances and conditions does not make out a case of unreasonableness of rates complained of.

*Held*, Since the decision in the San Joaquin Valley Rate Case, under which rates which were considered fair based upon the facilities which the Commission then had to arrive at reasonable rates were established, and the subsequent naming by the carriers at the request of the Commission of the commodity rate of \$6.20 from San Francisco to Exeter on sugar, nothing has occurred to justify the Commission in believing such rate unreasonable. Application dismissed without prejudice.

*J. O. Bracken*, for Complainants.

*George D. Squires*, for Defendant.

## REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

Complainants are engaged in the business of canning fruits and vegetables at various points in California, among others at Exeter, Tulare County, and in the conduct and operation of such business have occasion to ship sugar in car lots to their various canneries. In this case they complain of the rate on sugar from San Francisco to Exeter as compared with the rate on sugar from Visalia to San Francisco. Visalia and Exeter are both located in the San Joaquin Valley, being separated by but a short distance and both relatively the same distance from San Francisco. The complaint alleges that the rate on sugar from San Francisco to Exeter is \$8.70 per ton, while the rate in the opposite direction from Visalia to San Francisco is but \$3.50 per ton. Previous to the effective date of the decision in the case known as the San Joaquin Valley Rate Case, otherwise No. 116, the rate on sugar from San Francisco to Exeter was \$8.90 per ton. Under that decision, sugar moved under fifth class, which was \$7.60 per ton, but shortly after the effective date of the decision in Case No. 116 the Commission arranged with the carriers for a commodity rate on sugar less than the rate on fifth class, and \$6.20 per ton was named as such commodity rate. Based upon the information which was available to the Commission at that time, this rate of \$6.20 per ton for a haul of 246 miles, or 2.52 cents per ton per mile, was considered a fair and reasonable rate.

Complainants now allege that it is an unreasonably high rate and base their claim upon a comparison of rates, such comparison being the rate from Visalia to San Francisco, from Spreckels to San Francisco, from Betteravia to San Francisco, and from Hamilton to San Francisco. So far as the comparisons from Spreckels, Betteravia, and Hamilton are concerned, they may be dismissed from consideration for the reason that in the case of shipment from each of these places rates are affected by water competition. With reference to the rate from Visalia to San Francisco, investigation has shown that the sugar refinery at Visalia is not now being operated and has not been operated for some time and that there is no prospect of its resuming operation.

The rate of \$3.50 per ton from Visalia to San Francisco and Sacramento was made for several reasons: first, to enable the local manufacturer at Visalia to compete with the manufacturers on San Francisco Bay in the markets of San Francisco and Sacramento; second, because the empty car movement was largely northbound, and shipments of sugar from Visalia furnished loading for cars that would otherwise be returned empty; third, the movement from the Visalia sugar factory was expected to be large and the carriers believed that the volume of traffic justified a somewhat lower rate than in the opposite direction.

The first reason given, namely, that of enabling the manufacturer at

an interior point to compete with manufacturers at other points, I regard as most important and one that, sooner or later, must be definitely passed upon by this Commission. It is market competition pure and simple, and there is much to be said both for and against it. The Interstate Commerce Commission has recognized market competition within certain limits. The matter has never yet come up to this Commission in such a manner as to demand a definite decision, and, as I see it, it is not now presented to us by this case in such a manner as to require that it be definitely passed upon.

Complainants have alleged that a rate of \$8.70 from San Francisco to Exeter is unreasonably high. The rate at no time was \$8.70, but, as hereinbefore explained, previous to the decision in the San Joaquin Valley Rate Case (116), was \$8.90; was reduced by that case to \$7.60, and later, by arrangement with the carriers, to \$6.20. Upon learning of this at the time of the hearing, the testimony of complaints was directed to an effort to show that \$6.20 was an unreasonably high and discriminatory rate. To do this, comparisons of rates were made, as above indicated, which comparisons, in my judgment, were not fair, for the reason that the rates thus compared were not analagous to the rate complained of. Since the decision of the San Joaquin Valley Rate Case, under which rates which were considered fair based upon facilities which the Commission then had to arrive at reasonable rates, were established, and the subsequent naming by the carriers at the request of the Commission, of the commodity rate of \$6.20 from San Francisco to Exeter on sugar, I know of nothing that has occurred to lead us to think differently as to that rate, and as that is the only matter which is really before the Commission at this time, a conclusion as to that rate is a conclusion as to the merits of this complaint.

The Commission has delayed the decision in this case until it could receive from the carriers a large amount of statistical data bearing upon sugar rates, and particularly showing the rate per ton per mile received by the carrier on carload movements of sugar generally in the State. The rate of \$6.20 from San Francisco to Exeter is, as above stated, 2.52 cents per ton per mile. The following statement shows the actual movement of sugar from San Francisco and from Crockett during a period of five months, the volume of the tonnage and the average rate per ton per mile:

**SAN FRANCISCO.**

| Month.          | Tonnage. | Average rate<br>per ton<br>per mile. |
|-----------------|----------|--------------------------------------|
| June -----      | 809 tons | 3.43 cents                           |
| July -----      | 973 tons | 3.2 cents                            |
| August -----    | 628 tons | 2.52 cents                           |
| September ----- | 662 tons | 2.63 cents                           |
| October -----   | 261 tons | 3.38 cents                           |

## CROCKETT.

| Month.          | Tonnage.   | Average rate<br>per ton<br>per mile. |
|-----------------|------------|--------------------------------------|
| June -----      | 1,031 tons | 2.37 cents                           |
| July -----      | 1,841 tons | 2.98 cents                           |
| August -----    | 1,560 tons | 2.9 cents                            |
| September ----- | 1,904 tons | 2.36 cents                           |
| October -----   | 3,297 tons | 2.95 cents                           |

With the completion of certain investigations which the Commission is now making as to the movement of merchandise generally under commodity rates, which will enable us to determine whether sugar moving under commodity rates is paying a just and proper proportion of the cost of operation, and when the physical value of the railroad properties of the State has been taken so that that can be used as an element in arriving at the reasonableness of rates, it may be found that the commodity rates under which sugar is now moving generally throughout the State, most of which are higher than the rate from San Francisco to Exeter, are too high, but for the present I am of the opinion that the rate of \$6.20 per ton from San Francisco or Crockett to Exeter is a fair and reasonable rate, and that complainants have failed to show otherwise. In view of the frequency with which it is sought to be shown that rates are unreasonable or discriminatory by comparison with other rates, I believe the Commission should call attention of counsel who present such cases that a comparison of rates to be valuable or of weight with this Commission must be made under circumstances which are as nearly similar to the rates complained of as possible. A mere comparison of two or three rates made under entirely different circumstances and conditions does not make out a case of unreasonableness of rates complained of. On the information at present available I find that the rate of \$6.20 per ton on sugar from points on San Francisco Bay to Exeter, Tulare County, California, is a reasonable carload rate and recommend that the application be dismissed without prejudice. I recommend the following form of order:

## ORDER.

This application being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, complainants and defendant, and a full investigation of the matters and things involved having been had, and the Commission on this date having made and filed an opinion containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof.

*It is ordered* that as, in the judgment of the Commission, complainants have failed to show that the rate complained of, namely, \$6.20 per

ton of sugar from points on San Francisco Bay to Exeter, Tulare County, California, is an unreasonably high rate, and as there is no movement of sugar from Visalia to San Francisco, and has not been for some considerable time, at a rate less than the rate from points on San Francisco Bay to Exeter, by reason of which said rate could be declared discriminatory; now therefore, be it

*Ordered* that the complaint of Hunt Brothers Company in the above entitled action is dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of March, 1913.

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Decisions Nos. 509, 510 and 511, grade crossings; not printed. See end of volume.

DECISION No. 512.

IN THE MATTER OF THE APPLICATION OF RAYMOND TELEPHONE COMPANY TO RAISE RATES AND TO MAKE CERTAIN ALTERATIONS IN THE PHYSICAL CONDITIONS UNDER WHICH SERVICE IS RENDERED.

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Application No. 391.

*Decided March 20, 1913.*

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A. C. Shaw, for the Raymond Telephone Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This application is for permission to raise certain rates for telephone service in association with certain other rate changes which lower the charge for telephone service, the result being a uniform rate basis for the system of this company, these rate alterations to be accompanied by the closing of the central office at Coarse Gold and the bringing of all subscribers' lines into the central office at Raymond, Madera County, California.

The application was heard on February 21st at Raymond, and amounted to a rehearing of a similar former application by this company, being application No. 89, which was denied because of lack of clarity in the information furnished and because of uncertainty on the

part of the applicant as to what he wished to do in the matter of the physical conditions under which he was rendering service.

The investigations in the former case justified certain raises in the rates involved, and on the occasion of this hearing, no protest whatever was made to the general adjustment now prayed for. While certain rates will be raised by granting this application, others are lowered, and in no case does it appear that an exorbitant or unreasonable rate will result in view of the conditions under which this telephone service is being rendered; and the evidence indicates that the service will be materially improved by the closing of the Coarse Gold central office and the concentration of the lines on the board at Raymond.

It appearing from all the evidence that the rates petitioned for will be reasonable and that the improvement in service referred to will be effected, I recommend the following order:

**ORDER.**

Application having been made by the Raymond Telephone Company, of Raymond, Madera County, California, for an order of this Commission permitting applicant to increase certain telephone rates for the purpose of bringing the telephone system under a uniform rate schedule, and an order of this Commission permitting applicant to close its central office at Coarse Gold and to concentrate the lines involved on the central office board at Raymond, California, and a hearing having been held and it appearing that the rate alterations are fully justified and that the service will be improved by the proposed change of physical plant involved,

*It is hereby ordered* that the Raymond Telephone Company be and the same is hereby permitted to put into effect on and after April 1, 1913, a monthly rental charge for service on the lines of said company between Raymond and The Pines via Fresno Flats and Coarse Gold, in Madera County, California, as follows: Residence telephones, \$1.50 per month; business telephones, \$2.00 per month; and that elsewhere on the telephone system of the petitioner the rates for these classes of service shall also be \$1.50 and \$2.00 per month, respectively, thereby acquiring uniformity in rates over the entire system of the petitioner.

*And it is hereby further ordered* that the Raymond Telephone Company be and the same hereby is permitted to close its central office at Coarse Gold and to concentrate the lines involved on its central office board at Raymond, Madera County, California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of March, 1913.

Decision No. 513, grade crossing; not printed. See end of volume.

DECISION No. 514.

IN THE MATTER OF THE APPLICATION OF STOCKTON  
TERMINAL AND EASTERN RAILROAD COMPANY FOR AN  
ORDER AUTHORIZING AN ISSUE OF BONDS OF THE  
FACE VALUE OF THREE HUNDRED AND SEVENTY-  
EIGHT THOUSAND DOLLARS.

Application No. 336.

*Decided March 20, 1913.*

Applicant desiring (a) to complete its line of railway from the end of its present track in Stockton to Stockton Channel and ship's side, a distance of some 2.11 miles; (b) to make improvements in its line of railway as now constructed between Stockton and Bellota, and to purchase a steam locomotive and a motor car, and (c) to extend its line of railway from Bellota to the proposed terminus at Jenny Lind, a distance of some 10.9 miles, in order to finance said purpose, petitioned for authority to issue first mortgage six per cent bonds in the face amount of \$378,800 and to sell or pledge same; to issue six per cent collateral bonds in the face amount of \$30,000; and to apply to the above purposes the proceeds from the sale of bonds heretofore authorized by order in Application No. 51 in so far as such proceeds are not necessary for the purposes specified in said order. Applicant has been and is now operating at a loss, and the question presented was whether a railroad which is unable to pay the interest on its present bonded debt should be authorized to issue several hundred thousand dollars of additional bonds. Applicant contended that with the completion of its line of railway at both ends, and with adequate motive power, it could convert the present deficit into a profit and meet all fixed charges, including interest on the proposed bond issue, and in support of this contention presented estimates showing the revenue which it expects to derive from freight and passenger traffic when its line has been completed as proposed.

*Held.* The Commission is unable to say from the evidence whether or not applicant will be able to earn the revenue which it anticipates. In this case, as in all other cases involving the development of the State, in which there is a reasonable doubt, the doubt should be resolved in favor of the utility. The Commission can see to it that the money derived from the sale of the securities goes into the property, but it can not say whether or not the enterprise will succeed and will be able to pay the hoped for interest on bonds or dividends on stock.

Application granted, authority being given applicant to expend not to exceed \$72,000 for extending the railroad to Stockton Channel and \$25,000 for purchasing a steam locomotive and a motor car and for such purposes (1) to issue and sell at not less than 80, first mortgage bonds in the face amount of \$121,000; (2) or alternative therewith to pledge sufficient of its first mortgage bonds, at not to exceed two to one, to secure \$97,000, or so much thereof as may not be secured from a sale of the bonds in the amount authorized to be sold; (3) or, alternative with, the foregoing authorizations to issue and sell at not less than 80, collateral bonds in the amount of \$30,000 secured by first mortgage bonds in ratio of not to exceed one and one half to one. Also authority given (4) to issue and sell at not less than 80, additional first mortgage bonds in the face amount of \$224,000, the proceeds thereof to be used for improvements

on applicant's line from Stockton to Bellota, exclusive of the steam locomotive and motor car, and for extensions of applicant's railway from Bellota to Jenny Lind. The aforesaid issues conditioned upon the prior submission of satisfactory evidence showing that a binding contract or contracts for the sale of the first mortgage bonds have been made.

W. H. H. Hart, for Applicant.

#### REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application for an order of this Commission authorizing the issue of bonds and the use for other purposes of the proceeds of bonds heretofore authorized, as will hereinafter appear in greater detail.

Applicant was incorporated under the laws of California on October 23, 1908, for the purpose of constructing a railroad of standard gauge, to be operated by electricity or other motive power from the city of Stockton easterly and northeasterly to the town of Jenny Lind, in Calaveras county, a distance of some 30 miles. Applicant's line of railroad has now been completed along a portion of the route proposed from a point within the city of Stockton to Bellota, situated about 18 miles northeast of Stockton, and is being operated from Stockton to Fine, a distance of some 15.2 miles. For further information concerning applicant's general condition, see this Commission's opinion and supplemental opinion in Application No. 51, which opinion and supplemental opinion, in so far as applicable, are made a part of this opinion.

Applicant's authorized capital stock consists of 6,000 shares of the par value of \$100 each, whereof 2,639 shares have been issued. From the sale of this stock applicant has received \$183,900 in cash and the agreement with The United Investment Company, hereinafter referred to. Applicant has issued its trust deed, dated April 1, 1911, to the Mercantile Trust Company of San Francisco, to secure the issue of thirty (30) year 6 per cent bonds totaling \$500,000. Of the bonds so authorized, first mortgage bonds of the face value of \$116,000 have now been issued as follows:

|  |              |
|--|--------------|
| Bonds sold and delivered.....  | \$47,000 00  |
| Bonds pledged as collateral to secure promissory notes of<br>\$27,000 .....    | 54,000 00    |
| Bonds pledged to secure payment of collateral trust bonds<br>of \$10,000 ..... | 15,000 00    |
| Total .....  | \$116,000 00 |

Applicant has also issued 100 collateral gold bonds of the denomination of \$100 each under trust agreement with Mercantile Trust Company of San Francisco, providing for the issue of 500 such bonds, dated April 1, 1911, and due April 1, 1941, with interest at the rate of 6 per



cent per annum. Applicant has therefore now outstanding first mortgage bonds of the face value of \$116,000 and collateral bonds of the face value of \$10,000, making a total of \$126,000. Applicant also owes some \$12,000 on current bills and other unsecured indebtedness.

Applicant attached to its petition, as exhibit "B," a statement of expenditures for road and equipment as of October 31, 1912, totaling \$314,448.71. This amount, however, includes an item of \$66,660.85, of which amount \$60,000 consists of capital stock issued by applicant to The United Investment Company, the owner of all its capital stock except 9 shares, in return for the agreement of the investment company to issue its own stock at varying prices, ranging from 125 per cent of par upwards in exchange for such bonds of applicant as the purchasers thereof might, from time to time, desire to exchange for such stock. This agreement was supposed to render applicant's bonds more salable. As a matter of fact, this contract is of little or no value to applicant for the reason that few of applicant's bondholders would care to exchange their bonds for stock in the investment company. This Commission's engineering department has reported to the Commission that the original cost of that portion of applicant's property which is being operated is some \$213,059.13, that the cost of reproducing the physical property is some \$213,267.46 and that the present value of the physical property is some \$199,717.83. The figures just given apply only to the operated portion of applicant's line of railway and only to the physical property. While the Commission has not as yet formally passed upon the question of the value of applicant's line of railway, the figures herein given have some bearing on that question and are given for what they may be worth in the present application.

Applicant now also asks for an order of this Commission as follows:

(a) Authorizing the issue of first mortgage bonds of the face value of \$378,800 for the purposes hereinafter specified:

(b) Authorizing the issue of collateral bonds of the face value of \$30,000 for the purposes hereinafter specified;

(c) Authorizing the use of any or all of the first mortgage bonds as collateral security for funds to be borrowed on short term loans for the purposes hereinafter specified at the ratio of \$2.00 par value of bonds for \$1.00 of funds borrowed;

(d) Authorizing the application to the purposes of this application of the funds derived from the bonds authorized by this Commission's order in Application No. 51 and not necessary for the purposes specified in said order.

In support of its petition, applicant has presented an estimate of moneys necessary for the completion of its line of railway and for the purchase of a motor car and a steam locomotive, as shown on page 5 of the petition, totaling \$303,040. This item includes \$30,000 for legal expenses and interest during construction, clearly an excessive amount.

It appeared at the hearing that applicant desires money principally for three purposes: (a) to complete its line of railway from the end of its present track in Stockton to Stockton Channel and ship's side, a distance of some 2.11 miles; (b) to make improvements in its line of railway as now constructed between Stockton and Bellota, and to purchase a steam locomotive and a motor car; and (c) to extend its line of railway from Bellota to the proposed terminus at Jenny Lind, a distance of some 10.9 miles.

Applicant has a valuable franchise in the city of Stockton, authorizing the extension of its line of railway through and along the streets of Stockton to Stockton Channel. Applicant must construct this portion of its line of railway during the next few months or lose its franchise. The evidence shows that when this track to ship's side has been completed, applicant will be able to handle a much larger percentage of the produce of the territory which it traverses than is the case at present. Because of applicant's inability hitherto to deliver its freight at ship's side, and also because of its poor and unreliable service, due to inadequate and unreliable motive power, the farmers living along the line of applicant's railway have preferred, where possible, to haul this produce in wagons into Stockton. Applicant desires now to remove both of these causes of its failure to do a larger business. In addition to completing its line of railway to the water front, applicant desires also to improve its present line, principally by the purchase of a steam locomotive and a motor car and the providing of adequate depot facilities, station buildings and terminal grounds.

Applicant desires, further, to complete its line of railway to Jenny Lind, near which place are located beds of gravel from which applicant expects to derive a considerable revenue.

Mr. R. A. Thompson, this Commission's chief engineer, has prepared the following estimates of the cost of the three main extensions or improvements which applicant has in view:

*Estimate of cost to Construct as per Specifications Filed.*

|  |                    |
|--|--------------------|
| 1. End of present track in Stockton to Stockton Channel, 2.11 miles. |                    |
| Grading 26 blocks at \$105-----                                      | \$2,730 00         |
| Trestles -----   | 35,100 00          |
| Ties, 5,942 at 61 cents-----   | 3,624 62           |
| Rails, 199 tons, 60 pounds, at \$39-----                             | 7,761 00           |
| Railroad crossings, 21, at \$214-----                                | 4,500 00           |
| Fastenings -----   | 893 42             |
| Tracklaying, etc. -----  | 2,325 00           |
| Paving in Stockton -----   | 7,000 00           |
| Engineering and superintendence, 5 per cent-----                     | 3,196 70           |
| Legal expenses and contingencies, 3 per cent-----                    | 1,918 02           |
| Interest during construction, 3 per cent-----                        | 2,071 44           |
| <b>Total estimated cost -----</b>                                    | <b>\$71,120 20</b> |

|   |              |
|---|--------------|
| 2. Improvements, Stockton to Bellota, 15.23 miles.  |              |
| Right of way—The Oaks Addition—Stockton-----        | \$1,600 00   |
| 2.07 acres along line -----                         | 1,242 00     |
| Depot grounds, Stockton -----                       | 7,000 00     |
| Terminal grounds, Stockton-----                     | 7,000 00     |
| Trestles -----                                      | 350 00       |
| Tools -----   | 1,150 00     |
| Fencing -----                                       | 6,090 00     |
| Telephone -----                                     | 2,000 00     |
| Station buildings -----                             | 3,500 00     |
| Fuel station -----                                  | 1,000 00     |
| Equipment, 1 steam locomotive -----                 | 12,500 00    |
| 1 motor car -----                                   | 12,500 00    |
| Engineering and legal expenses, 5 per cent-----     | 2,796 60     |
| Contingencies, 3 per cent-----                      | 1,761 84     |
| Total estimated cost -----                          | \$60,490 44  |
| 3. New extension—Bellota to Jenny Lind, 10.9 miles. |              |
| Right of way-----                                   | \$5,000 00   |
| Grading -----                                       | 28,029 00    |
| Trestles -----                                      | 5,924 00     |
| Culverts -----                                      | 1,588 00     |
| Ties, 36,327, at 61 cents-----                      | 22,159 47    |
| Rails, 1,185.14 tons, at \$39-----                  | 46,220 46    |
| Switches, 21 sets, at \$80-----                     | 1,680 00     |
| Fastenings -----                                    | 5,196 58     |
| Tracklaying, etc. -----                             | 6,450 00     |
| Tools -----   | 1,350 00     |
| Telephone -----                                     | 1,000 00     |
| Station buildings, etc.-----                        | 750 00       |
| Turntable -----                                     | 2,500 00     |
| Water station -----                                 | 500 00       |
| Engineering and superintendence, 5 per cent-----    | 6,417 35     |
| Legal and contingencies, 3 per cent-----            | 3,850 41     |
| Interest during construction, 3 per cent-----       | 4,158 45     |
| Total estimated cost-----                           | \$142,773 72 |
| <i>Summary.</i>                                     |              |
| 1. Stockton -----                                   | \$71,120 20  |
| 2. Stockton to Bellota (including equipment)-----   | 60,490 44    |
| 3. Bellota to Jenny Lind-----                       | 142,773 72   |
| Grand total -----                                   | \$274,384 36 |

The matter of the greatest difficulty in connection with this application is that applicant has been and is now operating at a loss. Applicant's annual report for the year ending June 30, 1912, on file with this Commission, shows as follows:

|                            |             |
|----------------------------|-------------|
| Operating revenue -----    | \$15,447 10 |
| Operating expenses -----   | 20,952 93   |
| Net operating deficit----- | \$5,505 83  |
| Hire of equipment-----     | 785 60      |
| Net corporate loss-----    | \$6,291 43  |

The question which confronts this Commission is whether a railroad which is unable to pay the interest on its present bonded debt should be authorized to issue several hundred thousand dollars of additional bonds. Applicant contends that if it can complete its line of railway at both ends and secure adequate motive power, it can convert the

present deficit into a profit and pay the interest on all its outstanding bonds, including the proposed new issue. To support this contention, applicant presented estimates showing the revenue which it expects to derive from freight and passenger traffic when its line has been completed as proposed. If these hopes are realized, applicant will be able to meet all fixed charges, including interest on the bonds now applied for. I am unable to say from the evidence whether or not applicant will be able to earn the revenue which it anticipates. In this case, as in all others involving the development of the State, in which there is a reasonable doubt, I believe that the doubt should be resolved in favor of the utility. The Commission can see to it that the money derived from the sale of the securities goes into the property, but it can not say whether or not the enterprise will succeed and will be able to pay the hoped for interest on bonds or dividends on stock.

I was at first disinclined to recommend the issue of any additional bonds, unless they were all sold, so as to guarantee the completion of the railroad. Otherwise, a portion of the bonds might be sold and the proceeds invested in the property, and then, because of the impossibility of disposing of the remaining bonds, the entire enterprise might go into the hands of a receiver. In view of the urgent need, however, of building to the water front to save applicant's franchise, as well as to increase its traffic, and also of the further immediate need of a steam locomotive and a motor car, and of the further fact that applicant can not improve its condition unless it secures funds for these purposes, I have decided to recommend the issue of bonds for these purposes, to be sold so as to realize not less than 80 per cent of the face value of the principal thereof, besides interest accrued thereon, or to be pledged as collateral security, to secure the moneys necessary for these purposes, at a ratio of not to exceed \$2.00 in bonds to \$1.00 of indebtedness. The remaining bonds hereby authorized may be sold so as to realize not less than 80 per cent of the face value thereof, besides interest accrued thereon, but only when the entire issue has been sold, so as to provide funds to take up the indebtedness secured by bonds and to complete the railroad. I recommend that applicant be authorized to apply to the completion of its line of railway to the Stockton water front or to the acquisition of a steam locomotive and a motor car the moneys derived from the issue of the bonds authorized by this Commission's order in Application No. 51 and not necessary for the purposes specified in said order. I recommend, further, that applicant be authorized to issue its collateral bonds of the face value of \$30,000 to be secured by its first mortgage bonds of the face value of \$45,000 in accordance with the provisions of the collateral trust deed, and to be sold so as to realize not less than 80 per cent of the face value

of the principal thereof besides interest accrued thereon, the proceeds to be used in the extension of the line of railway to the Stockton Channel or in the purchase of said locomotive engine or motor car.

I find that the proceeds from the issue of the bonds authorized to be issued by the order which follows this opinion are not in whole or in part reasonably chargeable to operating expenses or to income and submit herewith the following form of order:

**ORDER.**

Stockton Terminal and Eastern Railroad Company having applied to the Railroad Commission of the State of California for an order authorizing the issue by said company of first mortgage gold bonds of the face value of \$378,800, said bonds to be payable on the first day of April, 1941, unless sooner redeemed, and to bear interest at the rate of six (6) per cent per annum payable semiannually on the first days of April and October of each year until the principal is paid, and secured by a trust deed or mortgage upon all property of the company, and also authorizing the issue by said company of collateral gold bonds of the face value of \$30,000, said bonds likewise to be payable on the first day of April, 1941, unless sooner redeemed, and to bear interest at the rate of six (6) per cent per annum, payable semiannually on the first days of April and October of each year until the principal is paid, and issued under the trust agreement hereinafter referred to, and also authorizing applicant to apply to the purposes herein specified the proceeds derived from the issue of the bonds authorized by this Commission's order in Application No. 51, in so far as not necessary for the purposes specified in said order, and a public hearing having been held upon said application and the Commission finding that the money to be secured by the issue of said bonds is necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of its facilities, and the improvement and maintenance of its service and that said purposes are not in whole or in part properly chargeable to operating expenses or to income,

*It is hereby ordered as follows:*

1. Stockton Terminal and Eastern Railroad Company is hereby authorized to issue one hundred and twenty-one thousand (\$121,000) dollars, face value, or so much thereof as may be necessary for the purposes hereinafter specified, of principal of first mortgage bonds of said company, maturing the first day of April, 1941, unless sooner redeemed, to bear interest at six (6) per cent per annum, payable semiannually, under and in pursuance of the terms of the deed of trust or mortgage heretofore and on the first day of April, 1911, made and executed by said Stockton Terminal and Eastern Railroad Company to Mercantile

Trust Company of San Francisco, as trustee, upon the following conditions and not otherwise, to wit:

(a) Stockton Terminal and Eastern Railroad Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent of the face value of the principal thereof besides interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used for the following purposes only:

(1) For the extension of said company's line of railway from its present terminus in Stockton to Stockton Channel, the proceeds from bonds not to exceed the face value of \$90,000.

(2) For the purchase of one steam locomotive and one motor car, the proceeds from bonds not to exceed the face value of \$31,000.

2. Stockton Terminal and Eastern Railroad Company is hereby authorized to pledge as many of its first mortgage bonds as may be necessary, at the ratio of not to exceed \$2.00 in bonds to \$1.00 of funds borrowed, to secure the amount of ninety-seven thousand (\$97,000) dollars or so much thereof as may not have been secured from the sale of the bonds authorized in section one (1) hereof, said funds to be used solely for the purposes specified in section one (1) hereof. The authority herein given is alternative with and not in addition to the authority conferred in section one (1) hereof.

3. Stockton Terminal and Eastern Railroad Company is hereby authorized to issue thirty thousand (\$30,000) dollars, face value of principal of its collateral gold bonds maturing the first day of April, 1941, unless sooner redeemed, to bear interest at six (6) per cent per annum, payable semiannually, under and in pursuance of the terms of the trust agreement, heretofore and on the first day of April, 1911, made and executed by said Stockton Terminal and Eastern Railroad Company to Mercantile Trust Company of San Francisco, as trustee, to be secured by first mortgage bonds in an amount not to exceed \$1.50 of first mortgage bonds to secure \$1.00 face value of collateral bonds, upon the following conditions and not otherwise, to wit:

(a) Stockton Terminal and Eastern Railroad Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent of the face value of the principal thereof besides interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used only for the purposes specified in section one (1) hereof.

(c) The authority herein given is alternative with and not in addition to the authority conferred in sections one (1) and two (2) hereof, the intention being that in no event shall the moneys used for the purposes

specified in section one (1) hereof exceed the sum of \$72,000 for extending said company's line of railroad to Stockton Channel and \$25,000 for purchasing a steam locomotive and a motor car.

4. Stockton Terminal and Eastern Railroad Company is hereby authorized to issue two hundred and twenty-four thousand (\$224,000) dollars, face value, or so much thereof as may be necessary, of its said first mortgage bonds, upon the following conditions and not otherwise, to wit:

(a) Stockton Terminal and Eastern Railroad Company shall sell the bonds hereby authorized so as to net the said company not less than eighty (80) per cent of the face value of the principal thereof, besides interest accrued thereon.

(b) The proceeds from the sale of said bonds shall be used for the following purposes only:

(1) For improvements on said company's line of railway from Stockton to Bellota, as specified in Mr. R. A. Thompson's estimate appearing in the opinion herein, and excluding the one steam locomotive and the one motor car, the proceeds from bonds not to exceed the sum of \$45,000.

(2) For the extension of said company's line of railway from Bellota to Jenny Lind, as specified in Mr. R. A. Thompson's said estimate, the proceeds from bonds not to exceed the sum of \$179,000.

(c) None of the bonds in this section authorized shall be issued until Stockton Terminal and Eastern Railroad Company shall have presented to the Railroad Commission evidence satisfactory to the Commission to the effect that said company has entered into a binding contract or contracts for the sale of all the first mortgage bonds in this order authorized to be issued, including those which may be pledged as collateral security, so that the Railroad Commission may be satisfied that said company can secure from the sale of its said bonds funds sufficient for all the purposes in this order authorized.

5. Stockton Terminal and Eastern Railroad Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or disposal of the bonds hereby authorized to be issued and on or before the twenty-fifth day of each month the company shall make a verified report to this Commission stating the sale or other disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of said moneys, all in accordance with this Commission's General Order No. 24 which, in so far as applicable, is made a part of this order.

6. The effectiveness of this order is conditioned on the prior payment of the fee specified in section 57 of the Public Utilities Act.

7. The authority hereby given to issue bonds shall apply only to bonds issued on or before the first day of April, 1914. If any of the bonds hereby authorized to be issued have not been issued by said time, application may be made to the Commission for an extension of said time.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of March, 1913.

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DECISION No. 515.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF TRUSTEES OF THE CITY OF ALHAMBRA FOR PERMISSION TO CONSTRUCT HIDALGO AVENUE, AT GRADE, ACROSS THE TRACKS OF THE SOUTHERN PACIFIC RAILROAD COMPANY AND THE SOUTHERN PACIFIC COMPANY.

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Application No. 377.

*Decided March 20, 1913.*

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Application of city of Alhambra for authority to extend Hidalgo Avenue at grade across the tracks of the Southern Pacific Railroad Company. The opinion analyzes and explains the provisions of section 43 of the Public Utilities Act, referring to railroad crossings.

*Held*, There is little doubt as to the power of the legislature, under section 22 of article XII of the constitution, to confer upon the Commission all the powers which it has purported to confer with reference to railroad crossings by the provisions of section 43 of the Public Utilities Act.

*Held*, The provisions of said section apply to cases in which the municipality and the railroad or street railroad corporations reach an amicable agreement and where condemnation proceedings are necessary. In neither case may the crossings referred to in section 43 be constructed unless the consent of this Commission has first been secured. This legislation is in line with legislation in many states in the Union conferring upon the state authority the right to regulate the construction and use of railroad crossings. This is a matter of very great and growing importance and one which affects very largely the safety of persons other than residents of the particular locality in which the crossing is made.

*Held*, The legislature intended to give the Commission the right to specify the particular point, horizontally as well as vertically, at which the crossing may be made. The legislature intended just as clearly to give the power to prevent a crossing at a dangerous curve by shifting the point of crossing one way or the other, as to prevent a dangerous crossing at grade by directing the installation



of an overhead or underground crossing. A crossing at a dangerous curve just as clearly demands the supervision of a state authority as does a dangerous crossing at grade. The Commission has the power to determine "the particular point of crossing" as those words would ordinarily be interpreted. If the legislature had conferred the power only to determine "the place of crossing" it might have been held that the Commission had the power only to prescribe the general locality and not the particular point. It will be obvious that the power to determine the particular point is very necessary in case the Commission's authority over this matter is to be effective.

*Sloan Pilzer*, city attorney, for Petitioner.

*A. W. Ashburn*, for Southern Pacific Company.

#### REPORT OF THE COMMISSION.

*THELEN*, Commissioner.

This is an application of the board of trustees of the city of Alhambra for an order of this Commission authorizing the construction of Hidalgo avenue, at grade, across the track of the Southern Pacific Railroad Company and the Southern Pacific Company in the city of Alhambra. Attached to the application is a copy of a deed from the Southern Pacific Railroad Company and the Southern Pacific Company to the city of Alhambra, granting an easement across the tracks of the grantors for the construction of the crossing.

As considerable confusion seems to exist concerning the authority of this Commission in the matter of railroad crossings, I deem it well before discussing the facts of this application, to discuss the law applicable thereto.

Section 43 of the Public Utilities Act, specifying this Commission's powers with reference to railroad crossings, reads as follows:

"(a) No public road, highway or street shall hereafter be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission; *provided*, that this subsection shall not apply to the replacement of lawfully existing tracks. The commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

"(b) The commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public road or highway by a railroad or street railroad and of a street by a railroad or *vice versa*, subject to the

provisions of section 2694 of the Political Code, so far as applicable, and to alter or abolish any such crossing, and to require where, in its judgment, it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the state, county, municipality, or other public authority in interest."

It will be noted that subdivision (a) contains general provisions to the effect that none of the kinds of crossings therein specified shall be constructed at grade unless this Commission's consent has first been secured. Subsection (b) goes much further into detail and covers cases in addition to those specified in subsection (a). Subsection (b) gives to the Commission exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each of the different kinds of crossings therein specified and to alter or abolish any such crossing and to require a separation of grades where necessary at any crossing, either heretofore or hereafter established, and to prescribe the terms upon which the separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the parties affected thereby.

The provisions of subsection (a), establishing the general principle that no crossings at grade shall be made without the authority of this Commission apply to the following five classes of cases:

1. Where a public road, highway or street is to be constructed across the track of a railroad corporation.
2. Where the track of a railroad corporation is to be constructed across a public road, highway or street.
3. Where the track of a railroad corporation is to be constructed across the track of another railroad corporation.
4. Where the track of a railroad corporation is to be constructed across the track of a street railroad corporation.
5. Where the track of a street railroad corporation is to be constructed across the track of a railroad corporation.

The provisions of subsection (b) conferring upon the Commission the broader powers hereinbefore specified are applicable to the following classes of crossings:

1. Where one railroad corporation is to cross another railroad corporation.
2. Where one railroad corporation is to cross a street railroad corporation.

3. Where a street railroad corporation is to cross a railroad corporation.

4. Where a railroad corporation is to cross a public road or highway or vice versa.

5. Where a street railroad corporation is to cross a public road or highway or vice versa.

6. Where a railroad corporation is to cross a street or vice versa.

The provisions of section 43 apply both to cases in which the municipality and the railroad or street railroad corporations reach an amicable agreement and where condemnation proceedings are necessary. In neither case may the crossings referred to in section 43 be constructed unless the consent of this Commission has first been secured. This legislation is in line with legislation in many states of the Union conferring upon a state authority the right to regulate the construction and use of railroad crossings. This is a matter of very great and growing importance and one which affects very largely the safety of persons other than residents of the particular locality in which the crossing is made.

The constitutional authority for the enactment of section 43 of the Public Utilities Act is found in sections 22 and 23 of article XII of the constitution of this state, as amended on October 10, 1911. Section 23 defines public utilities so as to include railroads and street railroads, and confers upon the legislature the authority to confer such powers upon the Railroad Commission respecting such utilities as the legislature may deem expedient. It is unnecessary, however, to rely on section 23, for the reason that the matter is fully covered by section 22 of article XII. This section, after creating the Railroad Commission, and containing provisions with reference to the organization thereof, and after conferring upon the Commission the power to establish rates of charges for the transportation of passengers and freight "by railroad and other transportation companies," and other powers not specifically including the matter of railroad crossings, continues as follows:

"No provisions of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the railroad commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the railroad commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution."

To my mind, there can be but little doubt as to the power of the legislature under this provision to confer upon the Railroad Commission all the powers which it has purported to confer with reference to railroad crossings by the provisions of section 43 of the Public Utilities Act.

The remaining questions concern the extent of the powers so conferred and the time of their exercise. As heretofore stated, section 43(b) confers upon the Commission "the *exclusive* power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection" of each of the classes of crossings therein specified. I understand that a contention has recently been made to the effect that this Commission's power under this section is limited to determining the particular vertical point of crossing. That is to say, it is contended that this Commission has the power to determine whether the point of crossing shall be in the air or at grade or underneath the surface of the ground, but that the Commission does not have the right to determine the point at which the vertical line shall cut the surface of the ground. I am not impressed by this argument. In my opinion, the legislature intended to give to this Commission the right to specify the particular point, horizontally as well as vertically, at which the crossing may be made. In my opinion, the legislature intended just as clearly to give to the Commission the power to prevent a crossing at a dangerous curve, by shifting the point of crossing one way or the other, as to prevent a dangerous crossing at grade, by directing the installation of an overhead or underground crossing. A crossing at a dangerous curve just as clearly demands the supervision of a state authority as does a dangerous crossing at grade. In my opinion, the Commission has the power to determine "the particular point of crossing" as those words would ordinarily be interpreted. If the legislature had given the Commission the power only to determine "the place of crossing," it might have been held that the Commission had the power only to prescribe the general locality and not the particular point. It will be obvious that the power to determine the particular point is very necessary in case the Commission's authority over this matter is to be effective.

It is unnecessary in this case to express an opinion on the question of whether or not the Commission's consent must be secured before a proceeding is brought to condemn a right of way across railroad tracks. It is evident that the Commission's consent must have been secured before a final decree can be made in a condemnation suit, for the simple reason that otherwise the court can not know where the crossing is to be located, what land is to be taken, or what the damages may be. If the Commission shifts the point of location one way or the other, the land to be taken will change. Likewise, if the Commission directs that an overhead crossing or an underground crossing be installed, the amount of damages will be different. Whether the Commission's order must be set up in the original condemnation complaint or whether it is sufficient that the order be introduced in evidence at the trial is a matter

on which I shall express no opinion in this proceeding. It will at once occur to a careful lawyer that the safe thing to do is to secure this Commission's consent before the condemnation proceedings are initiated and to set up that consent in the pleadings. Before leaving this branch of the question, I desire to draw attention to the fact that the provisions of section 22 of article XII of the constitution are unrestricted and that they do not except the cases of cities governed under freeholders' charters.

Hildago avenue, in the city of Alhambra, is a street sixty feet wide, which it is now proposed to extend across what is known as the Duarte or Monrovia branch of the Southern Pacific Railroad Company, operated by the Southern Pacific Company, into Tract No. 1791, being a subdivision of a portion of lots 3 and 4, in range 5, and a portion of lot 3, range 4, and all of lot 4, range 4, of the Alhambra Tract, as per Book 3, page 266 of the Miscellaneous Records of the county of Los Angeles. It is proposed to have Hidalgo avenue extended some 330 feet, more or less, beyond the railroad right of way to the southerly line of Grand avenue. Beyond this point the acreage has not as yet been subdivided.

On the Duarte branch of the Southern Pacific line of railroad one mixed freight and passenger train operates each way per day, and at times, extra trains are run.

The subdivision heretofore referred to was surveyed in May, 1912. On October 31, 1912, the Southern Pacific Railroad Company and the Southern Pacific Company made their deed to the city of Alhambra, conveying the easement heretofore referred to. This deed contained a specific condition to the effect that the grant should not confer any rights upon the city "unless and until said party of the second part shall first secure from the Railroad Commission of the State of California its permission for the construction at grade, of such public highway across said track." Notwithstanding the fact that the attention of the parties was thus specifically drawn to the necessity of securing this Commission's consent, the owners of the subdivision nevertheless proceeded to construct Hidalgo avenue across the railroad right of way, and to install the curbs, gutters, sidewalks and electric light posts. At the present time the street work has been entirely finished.

The only excuse which the owners of the subdivision urged was that they did not know that the consent of the Railroad Commission would be necessary. In view of the fact that their attention was drawn to the matter in the deed from the Southern Pacific Railroad Company and the Southern Pacific Company, I am not inclined to place much reliance on this excuse. The only alleviating circumstance which occurs to me is the fact that there has been general confusion concerning the matter of this Commission's authority as to railroad crossings. This

confusion is the occasion for explaining the law, as is being done in this opinion. A copy of this opinion will be sent to each of the city attorneys in the State, so that there may be no further doubt of this Commission's position in the matter.

The Southern Pacific Railroad Company and the Southern Pacific Company, after granting to the city of Alhambra their deed conveying this easement, nevertheless appeared at the hearing to oppose the grant of the application. These companies also, in letter dated December 14, 1912, transmitting to the city of Alhambra the deed heretofore referred to, after referring to the necessity of securing the consent of this Commission, referred to the enclosure of four additional copies of the easement, together with four prints and original tracings of the same "to be forwarded by you together with your written acceptance of the easement to said State Railroad Commission, after which you will no doubt receive the requisite authority to install the crossing." In my opinion, these two positions on the part of the railroad companies are inconsistent. There is no doubt that a part, at least, of the confusion in this matter is due to the fact that the parties were led by the attitude of the railroad companies to believe that the consent of the Railroad Commission would be a mere matter of form.

I find, as a fact, that it would be reasonable to extend Hidalgo avenue across the tracks of the Southern Pacific Railroad Company and the Southern Pacific Company, and that this crossing should be constructed at grade.

This leaves open the sole remaining question as to whether or not this crossing should be protected by a safety device, and if so, what the character of the device should be and who should bear the expense of the installation and maintenance of the same. The representatives of the railroad companies at the hearing insisted that it would be necessary to install a bell and that the cost thereof would be in the neighborhood of two hundred and fifty dollars. The railroad companies offered to maintain the bell in case the cost thereof were paid by the city of Alhambra or the owners of the subdivision. The city of Alhambra, on the other hand, contended that it was unnecessary to install a bell. They referred to the fact that on the main line operated by the Southern Pacific Company in the city of Alhambra, no safety devices have been installed, and contended that the bell now installed at the crossing of the Duarte branch with Almansor street, some two hundred and fifty feet westerly from the westerly line of Hidalgo avenue will give sufficient warning to persons passing along Hidalgo avenue. The Southern Pacific Company, in reply, urged that the crossings of the Duarte branch are more dangerous than those of the main line, for the reason that people are not so accustomed to expect trains to pass thereon, and contended that the bell at Almansor street is not sufficient for the purpose of protecting the Hidalgo avenue crossing.

I made a personal inspection of the proposed crossing and the vicinity thereof, and find that while the bell at Almansor street would be sufficient in still weather to warn a pedestrian on Hidalgo avenue, this bell would probably not be sufficient to warn automobilists. From the facts ascertained by my inspection, I am unwilling to recommend to the Commission that it order the installation of a protective device at the present time. As already stated, generally only two trains per day run on the Duarte branch. Hidalgo avenue will extend only some 330 feet, more or less, beyond the crossing, and the territory beyond has not as yet been subdivided. Comparatively few persons will use the extension of Hidalgo avenue for some time to come, and it will be many years before houses and trees obstruct the clear view of the crossing which at present can be had by persons approaching the crossing from both directions. To these facts should be added the further fact that all persons using the crossing, except possibly automobilists, will receive sufficient warning from a bell now located at Almansor street. By the time that the altered circumstances in the vicinity of this crossing may demand the installation of a bell, it may well be that conditions may have so changed as to make some other disposition of the matter necessary.

I recommend that the application be granted, and submit herewith the following form of order:

**ORDER.**

The city of Alhambra having filed with this Commission its application for an order for the construction of Hidalgo avenue at grade, across the tracks of the Southern Pacific Railroad Company and the Southern Pacific Company in the city of Alhambra, and a public hearing having been held on said application, and the Commission finding that public convenience and necessity will be subserved by the construction of said crossing at grade, and being unwilling for the present to order that the expense of a safety device or other protective device be incurred,

*It is hereby ordered* that said application be and the same is hereby granted on the following express condition:

1. The cost of hereafter maintaining the crossing on each side of the track of Southern Pacific Railroad Company and up to within two (2) feet of the rails thereof shall be borne by city of Alhambra. The cost of maintaining the crossing over the track, and also over and between such tracks as may hereafter be built under the authority of the Commission and to a distance of two (2) feet on each side of the rails thereof, shall be borne by said company.

2. The crossing shall be built of a width (in the direction parallel with the track) of not less than thirty-six (36) feet with grades of

approach not exceeding six (6) per cent and shall be ballasted with first class stone or gravel ballast to a depth of not less than six (6) inches across the track and to a distance on each side thereof sufficient to make same safe and substantial for the passage of vehicles and not less than twenty (20) feet.

3. It is distinctly understood that the Commission herein reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of the crossing as to it may seem right and proper, and to revoke the permission herein granted, when, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of March, 1913.

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Decisions Nos. 516, 517 and 518, grade crossings; not printed. See end of volume.

#### DECISION No. 519.

### THE TOWN OF HAYWARD AND THE CHAMBER OF COMMERCE OF HAYWARD

*vs.*

### WESTERN PACIFIC RAILWAY COMPANY.

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Case No. 262.

*Decided March 24, 1913.*

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Complainants asked for the establishment of passenger train service of six trains daily each way between Hayward and San Francisco by Western Pacific Railway Company, and for a reduction in fares. The application denied without prejudice, the evidence having failed to disclose that the passenger traffic between said points has yet reached proportions which will justify any reductions in rates, or that defendant is in a position at present to furnish the additional service demanded.

*Thomas V. O'Brien*, for Complainants.

*Allan P. Matthew*, for Defendant.

#### REPORT OF THE COMMISSION.

ESHLEMAN AND LOVELAND, *Commissioners*.

This is an action brought by the town of Hayward and the Chamber of Commerce of Hayward praying for an order requiring the Western Pacific Railway Company to inaugurate a passenger train service to



accommodate commutation travel, and also that an order be issued reducing passenger fares as follows:

|   | From.  | To.    |
|---|--------|--------|
| Commutation fare between San Francisco and Hayward..... | \$6 00 | \$5 00 |
| Single fare between San Francisco and Hayward.....      | 50     | 30     |
| Round trip fare between San Francisco and Hayward.....  | 70     | 50     |
| Single fare between Hayward and Oakland.....            | 40     | 20     |

The complainants ask for the establishment of passenger train service of six trains daily each way between Hayward and San Francisco.

At the outset, we will state that complainants have not sustained their contentions that the passenger fares are excessive and unreasonable. The records of the defendant do not disclose the fact that its passenger traffic has yet reached the proportions which will justify any reduction in passenger rates. If the passenger revenue which would be derived from traffic flowing to the Western Pacific Railway would result in any profit whatsoever, there might be some justification in requiring the road to accept a reduction in rates, which would create this profit, particularly in view of the present earning capacity of the line.

But it must be remembered that the Western Pacific is a new line, having been constructed in the face of the most severe physical obstacles and financial difficulties during the panic of 1907. Until such time as the line has had reasonable traffic development, it would be most unwise and unjust to require it to reduce rates unless by so doing a profit not heretofore present could be realized.

As to the complainant's demand for a passenger train service consisting of six trains each way daily between Hayward and San Francisco, we believe it absolutely impossible for the defendant to give any such service at this time, because of the lack of floating equipment. The defendant owns but one steamer, which is at present handling all of its business satisfactorily, but certain running repairs must be made between trips to keep this steamer in service daily.

Commutation service to be valuable at all must be absolutely reliable, and the trains must not only depart and arrive on time, but be operated at such frequent intervals as will accommodate a large number of people who must be at their place of business at different hours. The slightest departure from schedule time of commutation trains renders the service of no great value.

This class of service we do not believe the Western Pacific is at this time in a position to render. Even if the road possessed the required steamers and rail equipment to give the service it is very doubtful if the commutation and suburban travel would be profitable, and at this

time we do not feel that the line can afford to operate the service asked for by complainants at a loss.

Whenever the Western Pacific Railway is in a position to give the people of Hayward an adequate commutation service, the Commission will give the matters complained of further consideration.

We are not unmindful of the fact that railroad promoters frequently make all sorts of promises to town trustees and citizens in order to secure valuable franchises or concessions. In this case, we have no doubt that engineers and others formerly connected with the Western Pacific promised the mayor and town officers a better service than has been given the citizens of Hayward as an inducement to grant franchises through that town.

There is no doubt but that the Western Pacific is so located as to serve the community better than its competitors in the matter of time, and as soon as this line is physically and financially able to take advantage of its superior location, the Commission will expect it to do so.

In order that no injustice should be done, we requested complainants several months ago to furnish the Commission a statement of persons who would purchase commutation tickets, provided adequate service was established. We desired to know with reasonable certainty what revenue could be expected from this class of travel, and the statement asked for has not been furnished. The complaint will be dismissed without prejudice, and we herewith submit the following order:

**ORDER.**

The town of Hayward and the Chamber of Commerce of Hayward having complained against the rates and service of the Western Pacific Railway Company, and a hearing having been duly held,

*It is hereby ordered*, that the complaint of the town of Hayward and the Chamber of Commerce of Hayward against the Western Pacific Railway be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of March, 1913.

## DECISION No. 520.

IN THE MATTER OF THE APPLICATION OF LOS GATOS  
TELEPHONE COMPANY FOR AUTHORITY TO ISSUE  
CAPITAL STOCK OF THE PAR VALUE OF FIFTEEN  
THOUSAND DOLLARS.

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Application No. 423.*Decided March 24, 1913.*

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Applicant proposes to expend \$12,000 in the purchase of a lot and the erection thereon of a building fully equipped for its purposes, its present equipment being housed in a rented building located at some distance from the logical wire center of the community. For this purpose, the company makes application for approval of the issue of \$15,000 capital stock to be sold at par, the balance of the proceeds, to wit: \$3,000, to be used for extensions and for the discharge of indebtedness. As the purposes for which applicant desires to expend the proceeds of said issue are proper corporate purposes and fall within the classes of expenditures authorized by the Public Utilities Act, application granted, the Commission pointing out material considerations which applicant should bear in mind in connection with the expenditure of moneys for non-revenue producing properties.

*Rufus H. Kimball, for Applicant.*

## REPORT OF THE COMMISSION.

*THIELEN, Commissioner.*

This is an application for an order of this Commission authorizing the issue of capital stock of the par value of \$15,000 for the purposes hereinafter specified.

Los Gatos Telephone Company is one of the so-called independent telephone companies and serves the city of Los Gatos and territory adjacent thereto. The company has an arrangement with The Pacific Telephone and Telegraph Company providing for toll service.

Applicant was incorporated in November, 1910, with an authorized capital stock of \$25,000, divided into 2,500 shares of the par value of \$10 each. Of the stock so authorized, 1,955 shares have been issued. Of the shares so issued, 1,705 were sold for cash at par and 250 were issued as commission in connection with the purchase by applicant of its plant, formerly owned by Pacific States Telephone and Telegraph Company. Applicant alleges that the cost of its plant with extensions thereto has been \$22,372.15. In making this computation, no allowance has been made for depreciation, except in so far as included in expenditures for repairs and extensions.

On the day of this hearing, March 19, 1913, applicant claimed to have 460 subscribers. During the period from December 1, 1911, to

December 1, 1912, the number of applicant's subscribers increased by 79.

Applicant now applies for authority to issue 1,500 shares of its capital stock at not less than par and to apply the same to the following purposes:

|  |                |
|--|----------------|
| For the purchase of lot for new building, not to exceed-----                     | \$4,000 00     |
| For the erection of telephone building thereon, not to exceed----                | 8,000 00       |
| For refunding of promissory note for \$1,000, held by Bank of<br>Los Gatos ----- | 1,000 00       |
| For new construction as follows:   |                |
| Additions to switchboard and protective equipment--                              | \$650 00       |
| 2,000 feet of 100 pair aerial cable-----   | 832 50         |
| 225 feet of 25 pair aerial cable-----  | 254 70         |
| 750 feet of 50 pair aerial cable-----  | 499 52         |
|  | <hr/> 2,236 72 |

Applicant's present equipment is housed in a rented building located at some distance from the logical wire center of Los Gatos. Applicant desires to purchase a lot more advantageously located with reference to a wire center and to erect thereon a fully equipped building to be devoted solely to its own purposes. It is clear that it would be advantageous for applicant to have its equipment located nearer the wire center, but it is not equally clear that it is necessary for this purpose to purchase a lot and erect thereon an \$8,000 building. Applicant desires also to refund a promissory note for \$1,000, now held by the Bank of Los Gatos, and to expend the sum approximately \$2,236.72 for aerial cable extensions and switchboard equipment as hereinbefore indicated, for the purpose of providing in part for its growing business.

It will be noted that of the moneys thus to be expended, the sum of \$12,000 is to be spent for new revenue producing property. This fact necessitates an inquiry into applicant's financial condition for the purpose of ascertaining whether applicant will be able to pay dividends on the additional capital stock proposed to be issued and also to finance the necessary extensions.

A summary of applicant's finances for the year ending November 30, 1912, is as follows:

|   |            |
|---|------------|
| Total operating revenue-----                    | \$9,728 55 |
| Plant addition -----                            | 1,468 46   |
|   | <hr/>      |
| Net operating revenue-----                      | \$8,260 09 |
| Operating expenses -----                        | 6,061 48   |
|   | <hr/>      |
| Net income -----                                | \$2,198 61 |
| Dividends, 8 per cent on \$19,550 of stock----- | 1,564 00   |
|   | <hr/>      |
| Surplus -----                                   | \$634 61   |

If applicant now issues additional capital stock of the par value of \$15,000 and pays 8 per cent dividends thereon, it will expend annually an additional sum of \$1,200 for dividends. It is obvious that such payment can not be made out of a surplus of only \$634.61. Applicant,

however, draws attention to the fact that the erection of the new building would save the item of \$540 for rent each year, \$25 to \$30 per season for heating, and the interest on a saving of some \$800 in the matter of aerial cable extensions. Applicant also urges that when these improvements have been made it will be able to take care of new business, both waiting and prospective. In this connection applicant claims that it will be able to secure 150 additional customers within the city limits alone when it has installed the necessary additional cables.

Thus far, applicant has not taken depreciation into consideration further than as indefinitely included in repairs and extensions.

It is evident that if applicant is to pay its usual dividends both on the present outstanding and on the additional capital stock, it will have to look to new business. It is equally apparent that no provision has been made for financing the necessary extensions. It is well known that in growing communities such as Los Gatos and vicinity the financing of new telephone extensions presents serious and unending difficulties.

It should be borne in mind that a utility's first duty is to render efficient and sufficient service for both its present and its prospective consumers.

I am not disposed to say to applicant that it shall not expend the sum of \$12,000 for a lot and a new building thereon, but I desire earnestly to draw applicant's attention to the necessity of conserving its resources to take care of the growing demands of the territory which it holds itself out as serving. Applicant should understand that this Commission will expect it to furnish adequate service on reasonable demand entirely irrespective of whether applicant purchases the new lot and erects the proposed building thereon.

As the purposes for which applicant desires to expend the proceeds of the additional capital stock are proper corporate purposes and fall within the classes of expenditures authorized by the Public Utilities Act, and as I do not desire to hamper applicant in its plans, but have pointed out very material considerations which applicant should bear in mind in connection with this matter, I submit herewith the following form of order:

#### ORDER.

Los Gatos Telephone Company having applied to the Railroad Commission for authority to issue capital stock of the par value of fifteen thousand (\$15,000) dollars for the purposes hereinafter specified, and a public hearing having been held upon said application, and the Commission finding that the purposes for which the issue is hereby authorized are not in whole or in part reasonably chargeable to operating expenses or to income.

*It is hereby ordered* that Los Gatos Telephone Company be and it is hereby authorized to issue its capital stock to the amount of fifteen thousand (\$15,000) dollars, par value, on the following conditions and not otherwise, to wit:

1. Said capital stock shall be issued so as to net said company not less than par.

2. The proceeds from the sale of said stock shall be applied only to the following purposes, that is to say:

|   |            |
|---|------------|
| For the purchase of a lot for a new building, not to exceed----               | \$4,000 00 |
| For the erection of a telephone building on said lot, not to exceed -----     | 8,000 00   |
| For refunding promissory note for \$1,000 now held by Bank of Los Gatos ----- | 1,000 00   |
| For new construction as follows:  |            |
| For additions to switchboard and protective equipment, not to exceed -----    | 650 00     |
| For aerial cables, not to exceed-----   | 1,600 00   |

3. Los Gatos Telephone Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the capital stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Railroad Commission, stating the sale or sales of said capital stock during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as applicable is made a part of this order.

4. This order shall become effective only when applicant's authorized capital stock has been increased in the manner specified by the statutes of this State, so that applicant's articles of incorporation authorize the issue of all the stock covered by this order.

5. The authority hereby given to issue capital stock shall apply only to capital stock issued by Los Gatos Telephone Company on or before the first day of April, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of March, 1913.

## DECISION No. 521.

IN THE MATTER OF THE APPLICATION OF THE SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR AN ORDER GRANTING PERMISSION TO INCREASE THE INDIVIDUAL MONTHLY COMMUTATION FARES BETWEEN SAN LEANDRO AND HAYWARD AND BETWEEN SAN LEANDRO AND SAN LORENZO, AS SHOWN IN ITEMS 123 AND 125, LOCAL PASSENGER TARIFF NO. 1, C. R. C. NO. 3, BY LIMITING THE FARES TO SAN LEANDRO (DAVIS STREET); ALSO APPLICATION FOR PERMISSION TO CHANGE ITEM NO. 22 IN SAME TARIFF TO READ SAN LEANDRO (WESTERN LIMITS), INSTEAD OF SAN LEANDRO, AND MAKING FARES READ SAME AS OAKLAND (EASTERN LIMITS) AND THUS INCREASING CERTAIN ONE-WAY FARES AND ESTABLISHING SAN LEANDRO (DAVIS STREET) AS THE END OF THE ZONE, INSTEAD OF SAN LEANDRO.

Application No. 324.

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HERMAN G. WALKER

*vs.*

SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS.

Case No. 347.

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HAYWARD CHAMBER OF COMMERCE

*vs.*

SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS.

Case No. 348.

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JAMES MATHESON

*vs.*

SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS.

Case No. 352.

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*Decided March 24, 1913.*

The San Francisco-Oakland Terminal Railways asked authority to amend its passenger tariff in two respects: (1) so as to provide that the monthly commutation tickets between Hayward and San Leandro, selling for \$2.50, and good between Hayward and the westerly limits of San Leandro, adjoining Oakland, be limited so as to be good between Hayward and a point in San Leandro,

to wit: Davis street, about half way between the easterly and westerly limits of said town. The effect of this modification would be to require passengers holding commutation tickets to pay an additional five cents between Davis street and the westerly limits of San Leandro; (2) so as to correct an alleged clerical error in its passenger tariff naming one-way fare of ten cents between Hayward and San Leandro by limiting this ticket for passage to or from Davis street, thereby entitling applicant to collect an additional five cents between Davis street (San Leandro) and Oakland city limits from passengers traveling on one-way fares. Walker, Haywood Chamber of Commerce, and James Matheson complained respectively against the fares charged and service furnished by said railway company. It appeared, with respect to the alleged clerical error naming one-way fare of ten cents between Hayward and San Leandro, that, whereas the tariff on file with the Commission provided a fare of only ten cents for this service, the railway company admitted that it had given instructions to its employees to collect fifteen cents, in the belief that it would in that way more effectively maintain its contention that the lower fare was inserted through a clerical error. In this manner the company, between December 12, 1912, and January 13, 1913, collected over \$1,000 in excess of the lawful fares.

*Held*, This money was taken by the railway company without right and should not be retained by it. The Commission, however, in view of the circumstances, does not at present feel disposed to recommend a prosecution of the company and its officers for these unlawful acts, provided that the money unlawfully collected be applied by the company in some lasting way for the benefit of its patrons on the Oakland-Hayward line; that thirty days time be given the company to suggest a method in which the money so collected shall be expended for the purposes herein indicated and that in the mean time further action in the premises be deferred.

Allegations respecting inferior service conditions discussed. With reference to alleged over-crowding of cars,

*Held*, It is not wise to make any order at this time specifically directing the company to run additional cars at any particular time, believing that it is better to call attention to the particular cars which appear to be overcrowded and permit the company to relieve the congestion in a way which will best fit into its present schedules. If the company does not, within ninety days from the effective date of the order entered herein, take the necessary steps to relieve the congestion, the Commission, upon having its attention drawn to the matter, will make further investigations. The Commission found—

- (1) That the one-way fare of fifteen cents between Hayward and Oakland is amply remunerative and the application of the San Francisco-Oakland Terminal Railways to restrict the ten-cent fare between Hayward and San Leandro to passage to or from Davis street (San Leandro) only, so as to bring about an increase in the through fare between Hayward and Oakland from fifteen cents to twenty cents, is not justified and should be denied.
- (2) That the application of the San Francisco-Oakland Terminal Railways to restrict the commutation ticket now sold between San Leandro and Hayward for passage from or to Davis street (San Leandro) only, so as to bring about an increase in fare for passengers using these tickets to the Oakland city limits and there paying an additional fare, is not justified and the application to so restrict the ticket should be denied.
- (3) That the present five-cent fare zones of the San Francisco-Oakland Terminal Railways, on its Hayward line, are such by reason of one zone overlapping another as to bring about a very confusing situation resulting in the public being charged excessive and unreasonable rates; that the cities of Oakland and San Leandro, while distinct municipalities, are practically one community; that the fare of five cents should be extended from the present easterly limits of the city of Oakland to Davis street (San Leandro); that a five-cent fare zone should be established between San Leandro (Davis street) and the station or



stop known as Ashland; that a five-cent fare zone should be established between Ashland and Hayward; that the fares so to be established are just and reasonable fares and that existing fares in so far as they differ from the fares so to be established are unjust and unreasonable.

- (4) That the company's monthly commutation fare of \$5.00 per month between Hayward and Oakland, good for one round trip daily, is an unreasonable and unjust fare and should not exceed \$4.50 for a similar ticket, the just and reasonable fare for this service. The company should also publish a commutation rate of \$4.00 per month between Hayward and Oakland without transfer privileges, good for one trip in each direction daily, except Sundays, the just and reasonable fare for such service.

The application of San Francisco-Oakland Terminal Railways denied and an order entered based upon the above findings of fact.

*Peter J. Crosby*, for Hayward Chamber of Commerce.

*H. G. Walker*, in *propria persona* and for James Matheson.

*A. A. Rogers*, for San Leandro Chamber of Commerce.

*Traylor W. Bell* and *Stanley J. Smith*, for San Francisco-Oakland Terminal Railways.

#### REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

The four above entitled proceedings involve passenger rates and service on the interurban electric lines of the San Francisco-Oakland Terminal Railways between Oakland and Hayward, in Alameda County, California, and points intermediate thereto and were heard together. As their subject matter is related, a single opinion and order will apply to all four proceedings.

In Application No. 324, the San Francisco-Oakland Terminal Railways asks authority to amend its passenger traffic in two respects: (1) so as to provide that the monthly commutation tickets between Hayward and San Leandro, selling for \$2.50, be limited so as to be good only between Hayward and Davis street, a street in San Leandro running north and south and distant about half way between the easterly and westerly limits of the town, instead of being good between Hayward and the westerly limits of San Leandro, adjoining Oakland; (2) so as to limit the applicability of the 10-cent one-way fare between Hayward and San Leandro to Davis street, in San Leandro, instead of permitting the fare to apply between Hayward and the westerly limits of San Leandro adjoining Oakland.

If this application is approved, passengers holding commutation tickets will have to pay an additional 5 cents between Davis street (San Leandro) and the western limits of the city. Likewise, passengers who ride between Hayward and any place west of Davis street, will have to pay an additional fare of 5 cents. Applicant claims that the fare of 10 cents between Hayward and San Leandro is a clerical error and insists that it was intended to limit the fare to Davis street on the west.

The application to limit the commutation tickets for passage between

Hayward and San Leandro (Davis street) was based on the fact that ordinarily passengers do not disembark or board cars in San Leandro between Davis street and the western limits of the town. It was further contended by the applicant that the merchants of Hayward were buying these commutation tickets and distributing them among their patrons who desired to travel to Oakland, it being possible to use this commutation ticket from Hayward to the western limits of San Leandro, then pay an additional 5 cents, and thus be carried from Hayward to Oakland at a fare much lower than the regular tariff.

While this application was being investigated by the Commission, it appeared that very few, if any, commutation tickets were in the hands of merchants and that the principal number of commutation tickets were in the hands of persons who traveled daily between Hayward and Oakland.

Shortly after the Commission decided to hold a public hearing on the application, the three above entitled complaints were filed.

In Case No. 347, *Walker vs. San Francisco-Oakland Terminal Railways*, the complainant alleges that the defendant company requires its patrons to sign a commutation ticket, subject to conditions which are stated to be illegal and unreasonable, and that because of his refusal to sign an agreement to abide by the conditions mentioned on the ticket, the same was confiscated by defendant; that the defendant carrier is not complying with the provisions of section 14 (a) of the Public Utilities Act in that it has refused to permit him to inspect schedules showing rates, fares, charges, etc., at its office in Elmhurst, where commutation tickets are on sale; and that the defendant is charging 15 cents for a one-way fare between Hayward and San Leandro contrary to the published rates on file with this Commission.

In Case No. 348, *Hayward Chamber of Commerce vs. San Francisco-Oakland Terminal Railways*, the complainant alleges that the defendant has been collecting 15 cents between the western limits of San Leandro and Hayward from some passengers, but only 10 cents from those who refused to pay more; that an additional 5 cents was demanded for passage between Davis street, San Leandro and the western limits of that city from passengers holding commutation tickets reading between Hayward and San Leandro; and that the monthly commutation fare of \$5.00 between Hayward and Oakland is excessive, unjust and unreasonable. Complainant prays for an order of this Commission fixing the one-way fare between Hayward and the western limits of San Leandro at 10 cents and establishing a fare of \$3.00 for a monthly commutation ticket without transfer privileges between Hayward and Broadway, Oakland.

In Case No. 352, *James Matheson vs. San Francisco-Oakland Terminal Railways*, the burden of the complaint is the service on the defendant's line between Oakland and Hayward. The complaint alleges:

(1) that cars are not properly ventilated and are unsanitary; (2) that certain cars are not furnished with light in the forward portion thereof, used as a smoking compartment; (3) that cars are not heated; (4) that cars are leaky; (5) that certain of the cars are constructed so as to provide more standing room and less seating room; (6) that cars are overcrowded, principally the one leaving Hayward at 7.57 a. m.; and, (7) that conductors employed by the defendant are discourteous. The complainant further alleges that conductors demand fares in excess of the fares published and on file with this Commission and that the fare of 10 cents between San Leandro and Hayward is excessive and unreasonable. The complainant prays for an order of this Commission directing the defendant company to furnish cars adequate and in proper condition for the service between Hayward and Oakland, and to provide seats for passengers; also to establish a fare of 5 cents between Hayward and the western limits of San Leandro; also to establish a fare of 5 cents between Oakland and the eastern limits of San Leandro.

Referring first to applicant's request for permission to limit the commutation tickets between Hayward and San Leandro to passage between Davis street (San Leandro) and Hayward, I find that the great majority of the San Leandro-Hayward commutation tickets are used by passengers who ride daily between Oakland and Hayward, and who use these tickets from the western limits of San Leandro (the eastern limits of Oakland) to Hayward, and pay an additional 5-cent fare between the Oakland eastern limits and points within the city of Oakland. There is nothing wrong in this practice. The Public Utilities Act specifically provides that no through rate shall exceed the aggregate of intermediate rates. If a passenger avails himself of the published tariff rates up to a certain point and pays the published tariff rates to a point beyond, he is obtaining no more than the law commands the carrier to give him.

The whole question whether the applicant should be permitted to restrict its commutation tickets for passage, good only between Davis street (San Leandro) and Hayward, so as to entitle it to collect an extra 5 cents between the eastern limits of Oakland and Davis street, San Leandro, depends on whether or not the present rates are remunerative. This question I shall consider in connection with the complaints of the Hayward Chamber of Commerce and James Matheson.

The applicant's request for permission to correct an alleged clerical error in its passenger tariff naming one-way fare of 10 cents between Hayward and San Leandro, by limiting this ticket for passage to or from Davis street, thereby entitling applicant to collect an additional 5 cents between Davis street (San Leandro) and Oakland city limits from passengers traveling on one-way fares, will also be considered in connection with said two complaints.

Referring now to the *Walker* case, I shall first consider the conditions

to which passengers are required to subscribe on commutation tickets, which conditions are alleged by complainant to be illegal and unreasonable. In my opinion, carriers do not have the right to print on their tickets any conditions which are not covered by tariff publication. A person examining a carrier's tariff on file with this Commission is entitled to know under what conditions passengers or freight will be transported. Conditions appearing on a ticket and not covered by the carrier's published tariffs are unlawful. Carriers must print in their tariffs the conditions which appear on the ticket itself. Several of the conditions appearing on defendant's commutation tickets are unreasonable and clearly unlawful. It will not be necessary now to pass definitely on each of these conditions, for the reason that the matter may be considered when the defendant presents for filing a tariff showing the conditions on which it intends to rely.

The defendant admitted at the hearing that it did not have its tariffs on file at its Elmhurst station. Defendant stated that it had not considered Elmhurst as a regular agency station, but admitted that inasmuch as tickets were sold at the receiving station at Elmhurst as a matter of convenience to the public and of assistance to conductors, the tariffs should be on file there. I am satisfied that the defendant did not wilfully violate section 14 (a) of the Public Utilities Act, providing in part that tariff schedules must be kept on file open for public inspection in every station where tickets are sold, and shall consider this matter as having been satisfactorily disposed of.

Concerning the allegation in the Walker complaint that the defendant was charging 15 cents between San Leandro and Hayward, whereas the tariff on file with this Commission provided a fare of only 10 cents for this service, the defendant has admitted that it gave instructions to collect the higher rate in the belief that it would in that way more effectively maintain its contention that the lower fare was inserted through a clerical error. The records of this Commission indicate that upon the complaint of several citizens concerning the service and practices of the defendant, the Commission notified the defendant's representatives that its tariff called for a fare of 10 cents only between San Leandro and Hayward, and that this fare only should be collected until the Commission acted one way or the other upon the application to restrict the fare to Davis street, San Leandro. The action of the defendant in continuing to collect the fare of 15 cents between the western limits of San Leandro and Hayward, in violation of the tariff on file with this Commission, was the cause of continual friction between passengers and conductors. The public was subjected to the necessity of struggling for the fare established by the tariff, and the defendant's employees were placed in the humiliating position of continually quarreling with passengers—collecting 15 cents when the passengers would rather pay the amount

than engage in an argument and accepting 10 cents when the passenger refused to pay any more. This arbitrary and unlawful action of defendant brought upon its head the well-deserved censure which was administered by the Commission at the hearing. A statement filed by defendant upon the demand of the Commission shows that between December 12, 1912 (on which day the defendant knew the situation), and January 13, 1913 (the first day of the hearing), defendant collected over \$1,000 in excess of the lawful fares. This money was taken by defendant without right, and should not be retained by defendant. It will be almost impossible for the people who were compelled to pay the excess fares to recover them. In view of defendant's apology at the hearing, and of its earnest efforts thereafter to supply all facts and data bearing on the questions at issue, and to assist the Commission in every way to get at the facts, I do not at present feel disposed to recommend a prosecution of the defendant and its officers for these unlawful acts, provided that the money unlawfully collected by defendant be applied by defendant in some lasting way for the benefit of its patrons on the Oakland-Hayward line. I recommend that thirty days' time be given to defendant to suggest a method in which the moneys so collected shall be expended for the purposes herein indicated, and that in the mean time further action in the premises be deferred.

I shall now consider the application of the San Francisco-Oakland Terminal Railways with reference to the restriction of one-way and commutation fares, the complaint of the Hayward Chamber of Commerce to the effect that the monthly commutation fare between Oakland and Hayward of \$5.00 is excessive and unreasonable, and the prayer of that body for the establishment of a fare of \$3.00 per month, and the complaint of James Matheson concerning the unreasonableness of the one-way fare between Hayward and San Leandro, and between Oakland and San Leandro, both of which the complainant asks to be fixed at 5 cents.

Taking up the first application of the San Francisco-Oakland Terminal Railways, it appears that the general theory on which carriers request an increase in rates is that the existing rates are not sufficiently remunerative. Witnesses for the applicant stated that the Hayward line was not a paying proposition. This general statement was later modified to refer to that portion of the Hayward line which lies east of the eastern limits of the city of Oakland. It is needless to say that carriers can not expect each particular piece of line to be self-supporting. Certain pieces of line produce nothing, but act as a bridge to carry the traffic from one producing section to another. Other lines may not produce enough to support themselves, but partly make up the deficiency by contributing traffic to the main artery or system. The Commission in considering these questions must necessarily consider the property as a

whole and endeavor to arrive at an adjustment which will be fair to the carrier and to the public alike. In so doing, it is often necessary, where business is extremely light on this or that particular branch and the traffic contributed to the main system is of small volume, to make some additional allowance for branch line service or while passing over remote and sparsely settled districts, which may be located at the end of a particular line. That these conditions do not apply to the present situation will hereinafter appear.

The applicant operated in November, 1912, thirty-eight lines exclusive of what is known as the "Key System." During this month the average daily receipts per car hour on all of the lines of the applicant amounted to approximately \$2.61 per car hour. Of the thirty-eight lines operated, twenty-six lines produced revenue less than \$2.61 per car hour and twelve produced more than that amount. In point of revenue per car hour, the Oakland-Hayward line ranked fourth of all the lines operated by the applicant.

In the month of August, 1912, the Hayward line produced receipts amounting to \$3.69 per car hour, and ranked second of all the lines operated by the applicant other than the Key System. During this month seventeen lines operated at less than \$1.71 per car hour, which amount covers the average cost of operating defendant's cars other than interest on bonded indebtedness and taxes. During the month of December, 1912, the average receipts on the Hayward line were \$3.58 cents per car hour and the line ranked fourth in the amount of receipts per car hour. During this month sixteen lines operated at less than \$1.71, representing the cost of operation.

During the month of November, 1912, the receipts of the Hayward line amounted to \$29,823.24. The passengers carried for the month amounted to 687,276. During the month of December, 1912, during part of which time the applicant received from some passengers less fare than from others for passage between San Leandro and Hayward, the applicant's receipts for the Hayward line amounted to \$30,702.86 and the number of passengers carried was 683,162. In other words, during the month of December the applicant's receipts for the Hayward line increased \$879.62 and the number of passengers carried increased 5,886, or an average of 15 cents per additional passenger carried.

During the month of January, 1913, the applicant's receipts per car hour on the Hayward line decreased to \$3.10, or about 48 cents per car hour less than during the month of December, 1912. January, however, is generally recognized as a dull month for travel, and it is noticeable that practically all of the lines of the applicant showed decreased earnings in January over December. The county line earnings decreased about 30 cents per car hour; the Richmond line about 34 cents per car

hour; the Grove street line about 24 cents per car hour; the Elmhurst line about 33 cents per car hour; the West Eighth street line about 36 cents per car hour, and in fact, practically all lines show substantial decreases in January as compared with December, from which facts I must conclude that the decrease in earnings on the Hayward line for the month of January as compared with December can not be attributed to the obedience by the carrier to its lawful tariff fares on file with the Commission, which fares are lower than those which it had been collecting.

Below is a statement of car hour receipts for all lines of the defendant's Oakland Traction System and the Hayward line, indicating that the Hayward line earns far above the average of all lines:

| Month.          | Number of lines operated. | Average receipts per car hour, all lines. | Rank of Hayward line car hour earnings. | Earnings per car hour, Hayward line. |
|-----------------|---------------------------|---|---|--------------------------------------|
| 1912            |                           |   |   |                                      |
| March -----     | 34                        | \$2.2846                                  | 2                                       | \$3.2479                             |
| April -----     | 35                        | 2.3227                                    | 1                                       | 3.3909                               |
| May -----       | 34                        | 2.3939                                    | 1                                       | 3.5978                               |
| June -----      | 33                        | 2.4072                                    | 1                                       | 3.7044                               |
| July -----      | 38                        | 2.3624                                    | 3                                       | 3.5566                               |
| August -----    | 38                        | 2.5393                                    | 2                                       | 3.6944                               |
| September ----- | 38                        | 2.5542                                    | 4                                       | 3.6291                               |
| October -----   | 38                        | 2.59684                                   | 3                                       | 3.59229                              |
| November -----  | 38                        | 2.60879                                   | 4                                       | 3.56769                              |
| December -----  | 38                        | 2.56133                                   | 4                                       | 3.58198                              |
| 1913            |                           |   |   |                                      |
| January -----   | 36                        | 2.33798                                   | 6                                       | 3.10280                              |
| February -----  | 37                        | 2.44617                                   | 6                                       | 3.06418                              |

Prior to the consolidation of the Oakland Traction Company, the San Francisco-Oakland-San Jose Consolidated Railway, and other properties, into what is now known as the San Francisco-Oakland Terminal Railways, the Oakland Traction Company earned as an independent property during the year 1910 an average of \$2.47 per car hour on all its lines. With earnings at the rate of \$2.47 per car hour the Oakland Traction Company for the fiscal year 1911 showed operating revenues of \$3,016,244.76, the operating expenses for this period \$1,953,616.33, or a net operating revenue of \$1,062,628.43. After payment of taxes and interest on funded and floating debt amounting to \$668,706.83, the Oakland Traction Company showed a net income of \$380,225.08. From this net income a dividend amounting to \$211,500 on the preferred stock of the corporation was paid, leaving a surplus of \$168,725.08. It must be remembered, as before stated, that this dividend was paid and the surplus created from an average earning per car hour of \$2.47.

The report before the Commission of the San Francisco-Oakland Terminal Railways for the year ending June 30, 1912, includes the Key

System, Oakland Traction Company, and other properties consolidated into what is now known as the San-Francisco Oakland Terminal Railways. For the fiscal year 1911-12 the operating revenues per car hour were \$2.93. From this report it is impossible to say exactly what the earning of each separate property are. The figures for the months of November and December, 1912, and January, 1913, indicate that the car hour earnings of the two principal parties of the San Francisco-Oakland Terminal Railways are as follows :

|                        | November,<br>1912. | December,<br>1912. | January,<br>1913. |
|------------------------|--------------------|--------------------|-------------------|
| Key System -----       | \$3 44             | \$3 51             | \$3 30            |
| Oakland Traction ----- | 2 61               | 2 56               | 2 34              |
| Average -----          | \$3 02½            | \$3 03½            | \$2 82            |

It will be seen by these figures that the Key System earnings per car hour are considerably in excess of those of the Oakland Traction Company, so that I believe it is safe to assume that the average car mile earnings of the Oakland Traction Company, as a whole, will not exceed \$2.50 per car hour.

The report of the Consolidated Company for the fiscal year ending June 30, 1912, indicates that a dividend of \$423,000, or 6 per cent on the preferred stock of the Oakland Traction Company, was paid during this year from the earnings of that company prior to consolidation.

According to the report rendered to the Commission for the fiscal year ending June 30, 1911, the railroad line of the Oakland Traction Company cost \$116,515.05 per mile. The property was capitalized at that time for \$285,591.80 per mile, which was divided into capital stock of \$176,653.20 per mile and funded debt \$108,938.60 per mile.

From the records on file with the Commission it would appear that the capitalization of the Oakland Traction Company was not materially increased in the fiscal year ending June, 1912, during which period it and other properties were consolidated into what is known as the San Francisco-Oakland Terminal Railways. Therefore, on an average earning of about \$2.50 per car hour, the Oakland Traction Company was able to pay interest on a funded debt of \$108,938.60 per mile and declared a dividend of 6 per cent on its preferred stock of \$68,447 per mile. In other words, the defendant earned a reasonable return on a capitalization of \$177,000 per mile when the actual cost of the road was approximately \$116,000 per mile. It is difficult to understand, therefore, on what ground the defendant urges that the Hayward line is not remunerative when the car hour earnings of that line range from \$3.06 per car hour to \$3.69 per car hour, particularly in view of the



fact that interest on its funded debt and dividends on its stock were paid on an average earning of not to exceed \$2.50 per car hour. It should also be remembered in this connection that during the latter part of January, and the entire month of February, the defendant has been operating its so-called Hayward Express cars through to the eastern limits of the city of Oakland without doing any local work and it is quite natural that the receipts of the Hayward line should fall off slightly on this account.

I shall turn now to the Matheson complaint, and particularly to matters affecting defendant's service.

Referring first to ventilation, it is a difficult matter, to say the least, to ventilate cars so as to please all patrons. Persons who like plenty of fresh air insist on all of the ventilators as well as the doors and windows being opened. Other passengers in the same car object to perhaps the doors, while still others object to the windows being opened. It is practically impossible to please every one on a street car or train in the matter of ventilation. Our investigations have developed the fact that on the Hayward and Lehigh type of cars, used on the Oakland-Hayward line, the roof ventilators as well as the rear car door are generally open. The Hayward type car has a smoking compartment which, if it happens to be on the rear of the car, according to the direction the car is traveling, is always open. If it happens to be in the forward end of the car, it is either open or closed, according to the notion of the passengers.

Referring to the complaints as to lighting, the Hayward type of car is lighted throughout. The Lehigh car has no smoking compartment and is lighted throughout. During our investigations we found but one payee type of car used in the Hayward service, this being the type of car concerning which complaint was made. The use of this type of car, which is more properly usable in strictly street car service, we understand to have been due to temporary shortage of cars. The payee type of car is open at both ends with a center compartment closed. The forward end of the car is used as a smoking compartment and is kept darkened at night in order that the motorman may better see the track ahead. We consider it absolutely essential that the motorman should be protected from the glare of the lights behind him. This is a recognized necessity where men are constantly straining their eyes ahead following the rays of a headlight and one which we consider necessary in safe operation at night. As already stated, it appears that this type of cars is very seldom used on the Oakland-Hayward line. If it appears that defendant has not a sufficient number of the Hayward or Lehigh type of cars for this run, defendant should acquire additional cars of these types.

Complainant alleges that cars of the defendant in the Hayward service are not heated. We know of no street car system in this western country which heats its cars for short runs. Some of the larger interurban systems, having runs of 80 or 90 miles, have electric heaters in their cars, but I doubt whether the installation of heaters on the cars of the Hayward line of the defendant company would prove satisfactory. It is not unusual to hear people complain about there being too much or too little heat on a large car of a steam railroad, and in a well filled street car we believe there would be considerably more complaint concerning heat than on steam trains. I do not believe the Commission is justified at this time on the showing in this case to require the defendant to install heaters in its cars on the Hayward line.

Concerning the allegation that defendant's cars are leaky, the Commission's inspectors have made an examination of the cars in the Hayward service, and have failed to find any evidence of the same being leaky. The roofs are sloping and water can not stand thereon. It is possible during a driving rainstorm, if the ventilators are open, that some water will come in through these ventilators, but under ordinary circumstances we believe it will not be difficult to avoid complaint on this score. I have no doubt that rain penetrated the inside of the car, as the complainant alleges, but this was probably due to the ventilators being open during a driving storm, or to the fact that the car in question, having run all summer in the dry weather, opened some seams which admitted the water. Whether or not the car roof will leak can only be detected after the first storm of winter. It might be well for the defendant as the winter season approaches to test the roofs of the cars and make such repairs as are necessary to keep out the moisture.

Since the hearing, the Commission's inspectors have made careful examination at different times of the sanitary condition of the cars in the service between Oakland and Hayward. They have found that in many instances cars were in a dirty condition, while others were clean or fairly so. In many cases windows were very dirty and the car floors in bad condition. The Commission realizes that during the rainy season it is difficult to keep either the windows or floors of a car in street car service clean. People will carry mud into a car and on the floor, and teams passing cars will splash water and mud on the sides of cars and on the windows. No amount of regulation can prevent such acts. Conductors can not at the end of each run wash the windows of a car, and they very seldom have time to sweep the car out before making a return trip.

I believe, as a rule, that the employees are just as anxious to have

their cars clean as the public, and our inspectors report that since the hearing in these cases there has been a marked improvement in the condition of the cars with regard to cleanliness. There is one thing in this connection which impresses me very forcibly, after a careful review of our inspectors' reports, and that is, that cars are frequently littered with scraps of paper and other débris thrown on the car floors by passengers. The public can not expect to ride in clean cars if they themselves wantonly litter them up.

It is my belief that cars should be thoroughly washed at more frequent intervals than once in ten days, which is the admitted practice of the defendant.

As to the complainant's contention that cars are constructed with a view to compelling passengers to stand rather than to be seated, the testimony at the hearing and our subsequent investigations have convinced me that this allegation is made under a misapprehension of the true state of facts. The Lehigh type car has all cross seats, and seats fifty-two passengers. The Hayward type car has cross-seats in one compartment and side seats in the smoking compartments, and seats the same number of passengers. In the smoking compartment, it is true, people can stand up to better advantage than in the section where smoking is not permitted, but nevertheless the same number of seats are provided, and if the car were equipped with nothing but cross seats it would seat no more passengers, being a car of the same length. From this it is apparent to me that the placing of cross-seats in the car would accomplish no good and would only discommode those who were obliged to stand. The payee type of cars seats forty-eight passengers, and could not be made to seat any more if seats were placed crosswise. Therefore, it is obvious that it is more comfortable, if passengers are obliged to stand, to have the seats running lengthwise in the car than crosswise. I am not passing on the relative convenience of cross or longitudinal seats for passengers who have seats.

Referring now to the overcrowding of the cars, the Commission has made a careful study of the situation. Attached to this opinion and order are tables prepared by the Commission's rate department showing exhaustively the travel on the various cars on the dates indicated, with particular reference to the relation between the number of seats and the number of passengers.

In considering the overcrowding of cars I shall first take up the eastbound service. As a general rule, I do not find that any material overloading of Hayward cars occurs before 4 p. m. Occasionally there is a slight overcrowding of cars between the hours of 11 a. m. and 1 p. m., but according to the records examined by the Commission this overloading has been confined exclusively to the territory west of the

Oakland eastern limits, the overcrowding being relieved in the neighborhood of Elmhurst. The car leaving Oakland at 4.16 p. m. appears to have been overloaded as far east as the Oakland eastern limits. The same may be said of the local car leaving Oakland at 4.36 p. m. for Hayward. The car leaving Oakland at 4.46 p. m. is always overcrowded, but on only one occasion, except Sunday, does this car show any overloading beyond the eastern limits of Oakland. The express car leaving at 4.56 p. m. is not now being overloaded. Between the hours of 5 and 6 p. m. the regular local leaving at 5.06 p. m. is generally overcrowded to a much greater extent than any of the cars at this hour. The local car leaving at 5.26 p. m. is frequently overloaded. The express car leaving Oakland at 5.16 p. m. is generally overloaded, but the other two express cars, one at 5.36 p. m. and one at 5.56 p. m., are seldom if ever overloaded. All of the overloading referred to is practically confined to points west of the eastern limits of Oakland. As the cars do not work between Webster street and the eastern limits of Oakland, it is safe to assume that the people who are compelled to stand on the express cars are compelled to do so until the eastern limits of Oakland are reached. There appears to be a general overcrowding of the local San Leandro cars in the afternoon, particularly between the hours of 5 and 6.30 p. m., which overloading is relieved prior to reaching the Oakland eastern limits.

This is one of the difficulties of street railroading which is hard to overcome. People who are in the habit of traveling to work between the hours of 6 and 9 a. m. all desire to return home from 5 to 6.30 p. m., with the result that a street railroad finds it extremely difficult to transport the passengers without overcrowding. If every passenger were to be provided with a seat, the company would be required to employ many extra motormen and conductors who would be compelled to remain idle practically all day or else run empty cars during the middle of the day. It would not be good business to run cars empty during the middle of the day and it would be most difficult for a street railroad to maintain a competent organization where it only provided three or four hours' a day work for its men. Hence, the problem of overcrowding cars between the hours of 5 p. m. and 6.30 p. m. is a difficult one to solve. The overloading of cars westbound from Hayward is confined almost exclusively to cars leaving Hayward at 6.49 a. m., 7.09 a. m. and 7.54 a. m. There are a number of cars operating locally between San Leandro and Oakland which appear to be overcrowded. I believe that defendant can materially relieve the congestion by running an additional car occasionally between Oakland and San Leandro, in both directions, at such times as it appears that the present westbound cars from Hayward are being overloaded at San

Leandro and at times when it appears that the eastbound cars are being overloaded west of the eastern limits of Oakland.

I do not believe it wise to make any order at this time specifically directing the defendant to run additional cars at any particular time, believing that it is better to call attention to the particular cars which appear to be overcrowded and permit the defendant to relieve the congestion in a way which will best fit in to its present schedules. If defendant does not within ninety days from the effective date of this order take the necessary steps to relieve the congestion, this Commission, upon having its attention drawn to the matter, will make further investigations.

With reference to the allegation in the complaint that employees of the defendant are discourteous, I can only say that in my judgment, the employees were confronted with a situation which would tax the patience of almost any one. The instructions to the conductors were to collect a fare in excess of the tariff fare on file with this Commission, a fact which was well known to the public, and a conductor in order to do his duty as directed by his employer was obliged to make every effort to collect the fare as directed by the defendant. Many passengers refused to pay a fare in excess of that published in the tariffs, with the result that there was constant conflict between the conductors and passengers, which, I believe, in a great measure accounts for the charges that the employees are rude and discourteous. The conductors were certainly in an unenviable position, and I am satisfied that it will be found that with the principal cause of conflict removed, the traveling public will find the conductors of the defendant as courteous a lot of men as will be found on any street railroad in the country.

After a careful consideration of all the evidence in these proceedings, I find the following facts:

I find as a fact that the one-way fare of 15 cents between Hayward and Oakland is amply remunerative, and the application of the San Francisco-Oakland Terminal Railways to restrict the fare to 10 cents between Hayward and San Leandro for passage to or from Davis street (San Leandro) only, so as to bring about an increase in the through fare between Hayward and Oakland from 15 cents to 20 cents, is not justified and should be denied.

I find as a fact that the application of the San Francisco-Oakland Terminal Railways to restrict the commutation ticket now sold between San Leandro and Hayward for passage from or to Davis street (San Leandro) only, so as to bring about an increase in fare for passengers using these tickets to the Oakland city limits and there paying an additional fare is not justified, and the application to so restrict the ticket should be denied.

I find as a fact that the present 5-cent fare zones of the defendant, San Francisco-Oakland Terminal Railways, on its Hayward line are such by reason of one zone overlapping another as to bring about a very confusing situation, resulting in the public being charged excessive and unreasonable rates; that the cities of Oakland and San Leandro, while distinct municipalities, are practically one community; that the fare of 5 cents should be extended from the present easterly limits of the city of Oakland to Davis street (San Leandro); that a 5-cent fare zone should be established between San Leandro (Davis street) and the station or stop known as Ashland; that a 5-cent fare zone should be established between Ashland and Hayward; that the fares so to be established are just and reasonable fares, and that existing fares in so far as they differ from the fares so to be established are unjust and unreasonable.

I find as a fact that the defendant's monthly commutation fare of \$5.00 per month between Hayward and Oakland, good for one trip daily, is an unreasonable and unjust fare, and should not exceed \$4.50 for a similar ticket, which sum I find to be a just and reasonable fare for this service. The defendant should also publish a commutation rate of \$4.00 per month between Hayward and Oakland without transfer privileges, good for one trip in each direction daily, except Sundays, which sum I find to be a just and reasonable fare for such service.

I submit herewith the following form of order:

**ORDER.**

San Francisco-Oakland Terminal Railways having made application to this Commission for authority to limit the individual monthly commutation fare between San Leandro and Hayward and between San Leandro and San Lorenzo, so that the western limit shall be Davis street, San Leandro, and also to limit the application of the one-way passenger fare between Hayward and San Leandro, so that the western limit shall be Davis street in San Leandro, and Herman G. Walker, Hayward Chamber of Commerce and James Matheson having filed with this Commission Cases Nos. 347, 348 and 352, respectively, against the San Francisco-Oakland Terminal Railways, complaining of the fares and service of said railway company, and said application and said cases having been consolidated and a public hearing having been held thereon, and the Commission being fully advised in the premises and basing its conclusions on the findings of fact contained in the opinion which precedes this order,

*It is hereby ordered as follows:*

1. The application of San Francisco-Oakland Terminal Railways is hereby denied.

2. San Francisco-Oakland Terminal Railways is hereby directed to publish and file with this Commission within twenty (20) days from the effective date of this order, passenger tariffs establishing the following one-way fares between Oakland and Hayward and points intermediate thereto; which fares are hereby found to be just and reasonable fares for the service performed:

(a) A passenger fare of five (5) cents between points within the city of Oakland and Davis street in San Leandro, with the present transfer privileges at points within the city of Oakland.

(b) A passenger fare of five (5) cents between Davis street in San Leandro and the station known as Ashland, located easterly from San Leandro.

(c) A passenger fare of five (5) cents between said station of Ashland and Hayward.

3. San Francisco-Oakland Terminal Railways is hereby ordered to publish and file with this Commission within twenty (20) days from the effective date of this order, a passenger tariff establishing a monthly commutation fare, good for one trip daily, of four dollars and fifty cents (\$4.50) between Hayward and Oakland, without transfer privileges, and also a commutation fare of four (\$4.00) dollars per month, good for one trip in either direction daily, except Sundays, without transfer privileges, between Hayward and Oakland, which fares are hereby found to be just and reasonable fares for the service performed.

4. The relief asked for in Cases Nos. 347, 348 and 352 is hereby granted in so far as it is covered by this order and denied in so far as not covered thereby.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of March, 1913.

**OVERLOADING OF CARS. HAYWARD SERVICE. SAN LEANDRO SERVICE.  
Hayward, East Bound.**

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 6.14 a.m. | 25                        | -----          | 27     | 4                     | -----          | 48     | 5                     | -----          | 47     |
| Jan. 21... | 6.14 a.m. | 25                        | -----          | 27     | 4                     | -----          | 48     | 0                     | -----          | 52     |
| Jan. 22... | 6.14 a.m. | 24                        | -----          | 28     | 11                    | -----          | 41     | 8                     | -----          | 44     |
| Jan. 23... | 6.14 a.m. | 26                        | -----          | 26     | 10                    | -----          | 42     | 12                    | -----          | 40     |
| Jan. 24... | 6.14 a.m. | 20                        | -----          | 32     | 8                     | -----          | 44     | 5                     | -----          | 47     |
| Jan. 25... | 6.14 a.m. | 24                        | -----          | 28     | 11                    | -----          | 41     | 8                     | -----          | 44     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 6.14 a.m. | 22                        | -----          | 30     | 9                     | -----          | 43     | 5                     | -----          | 47     |
| Jan. 28... | 6.14 a.m. | 31                        | -----          | 21     | 8                     | -----          | 44     | 5                     | -----          | 47     |
| Jan. 29... | 6.14 a.m. | 37                        | -----          | 15     | 16                    | -----          | 36     | 6                     | -----          | 46     |
| Jan. 30... | 6.14 a.m. | 22                        | -----          | 30     | 8                     | -----          | 44     | 10                    | -----          | 42     |
| Jan. 31... | 6.14 a.m. | 21                        | -----          | 31     | 7                     | -----          | 45     | 6                     | -----          | 46     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 6.34 a.m. | 54                        | 2              | -----  | 19                    | -----          | 39     | 24                    | -----          | 28     |
| Jan. 21... | 6.34 a.m. | 17                        | -----          | 35     | 18                    | -----          | 34     | 26                    | -----          | 26     |
| Jan. 22... | 6.34 a.m. | 55                        | 3              | -----  | 21                    | -----          | 31     | 27                    | -----          | 25     |
| Jan. 23... | 6.34 a.m. | 39                        | -----          | 13     | 21                    | -----          | 31     | 28                    | -----          | 24     |
| Jan. 24... | 6.34 a.m. | 15                        | -----          | 37     | 19                    | -----          | 33     | 18                    | -----          | 34     |
| Jan. 25... | 6.34 a.m. | 20                        | -----          | 32     | 16                    | -----          | 36     | 18                    | -----          | 34     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 6.34 a.m. | 19                        | -----          | 33     | 18                    | -----          | 34     | 23                    | -----          | 29     |
| Jan. 28... | 6.34 a.m. | 15                        | -----          | 37     | 14                    | -----          | 38     | 16                    | -----          | 36     |
| Jan. 29... | 6.34 a.m. | 16                        | -----          | 36     | 11                    | -----          | 41     | 9                     | -----          | 43     |
| Jan. 30... | 6.34 a.m. | 8                         | -----          | 44     | 15                    | -----          | 37     | 10                    | -----          | 42     |
| Jan. 31... | 6.34 a.m. | 18                        | -----          | 34     | 18                    | -----          | 34     | 16                    | -----          | 36     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 6.59 a.m. | 50                        | -----          | 2      | 12                    | -----          | 40     | 10                    | -----          | 42     |
| Jan. 21... | 6.59 a.m. | 34                        | -----          | 18     | 20                    | -----          | 32     | 15                    | -----          | 37     |
| Jan. 22... | 6.59 a.m. | 43                        | -----          | 9      | 12                    | -----          | 40     | 10                    | -----          | 42     |
| Jan. 23... | 6.59 a.m. | 37                        | -----          | 15     | 14                    | -----          | 38     | 10                    | -----          | 42     |
| Jan. 24... | 6.59 a.m. | 39                        | -----          | 13     | 21                    | -----          | 31     | 20                    | -----          | 32     |
| Jan. 25... | 6.59 a.m. | 8                         | -----          | 44     | 9                     | -----          | 43     | 6                     | -----          | 46     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 6.59 a.m. | 46                        | -----          | 6      | 18                    | -----          | 34     | 17                    | -----          | 35     |
| Jan. 28... | 6.59 a.m. | 38                        | -----          | 14     | 11                    | -----          | 41     | 10                    | -----          | 42     |
| Jan. 29... | 6.59 a.m. | 35                        | -----          | 17     | 14                    | -----          | 38     | 17                    | -----          | 35     |
| Jan. 30... | 6.59 a.m. | 37                        | -----          | 15     | 18                    | -----          | 34     | 17                    | -----          | 35     |
| Jan. 31... | 6.59 a.m. | 54                        | 2              | -----  | 15                    | -----          | 37     | 21                    | -----          | 31     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 7.14 a.m. | 38                        | -----          | 14     | 14                    | -----          | 38     | 10                    | -----          | 42     |
| Jan. 21... | 7.14 a.m. | 62                        | 10             | -----  | 10                    | -----          | 42     | 12                    | -----          | 40     |
| Jan. 22... | 7.14 a.m. | 58                        | 6              | -----  | 14                    | -----          | 38     | 9                     | -----          | 43     |
| Jan. 23... | 7.14 a.m. | 62                        | 10             | -----  | 16                    | -----          | 36     | 11                    | -----          | 41     |
| Jan. 24... | 7.14 a.m. | 25                        | -----          | 27     | 15                    | -----          | 37     | 13                    | -----          | 39     |
| Jan. 25... | 7.14 a.m. | 33                        | -----          | 19     | 4                     | -----          | 48     | 10                    | -----          | 42     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.14 a.m. | 11                        | -----          | 41     | 6                     | -----          | 46     | 6                     | -----          | 46     |
| Jan. 28... | 7.14 a.m. | 17                        | -----          | 35     | 9                     | -----          | 43     | 11                    | -----          | 41     |
| Jan. 29... | 7.14 a.m. | 55                        | 3              | -----  | 8                     | -----          | 44     | 7                     | -----          | 45     |
| Jan. 30... | 7.14 a.m. | 48                        | -----          | 4      | 12                    | -----          | 40     | 10                    | -----          | 42     |
| Jan. 31... | 7.14 a.m. | 70                        | 18             | -----  | 15                    | -----          | 37     | 13                    | -----          | 39     |



## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 7.39 a.m. | 32                        | -----          | 20     | 15                    | -----          | 37     | 11                    | -----          | 41     |
| Jan. 21... | 7.39 a.m. | 31                        | -----          | 21     | 17                    | -----          | 35     | 13                    | -----          | 39     |
| Jan. 22... | 7.39 a.m. | 16                        | -----          | 36     | 17                    | -----          | 35     | 13                    | -----          | 39     |
| Jan. 23... | 7.39 a.m. | 22                        | -----          | 30     | 13                    | -----          | 39     | 5                     | -----          | 47     |
| Jan. 24... | 7.39 a.m. | 31                        | -----          | 21     | 12                    | -----          | 40     | 9                     | -----          | 43     |
| Jan. 25... | 7.39 a.m. | 26                        | -----          | 26     | 8                     | -----          | 44     | 7                     | -----          | 45     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.39 a.m. | 52                        | -----          | 52     | 21                    | -----          | 31     | 19                    | -----          | 33     |
| Jan. 28... | 7.39 a.m. | 15                        | -----          | 37     | 16                    | -----          | 36     | 11                    | -----          | 41     |
| Jan. 29... | 7.39 a.m. | 31                        | -----          | 21     | 19                    | -----          | 3      | 11                    | -----          | 41     |
| Jan. 30... | 7.39 a.m. | 31                        | -----          | 21     | 14                    | -----          | 38     | 11                    | -----          | 41     |
| Jan. 31... | 7.39 a.m. | 15                        | -----          | 37     | 19                    | -----          | 33     | 13                    | -----          | 39     |
| Jan. 20... | 7.54 a.m. | 27                        | -----          | 25     | 14                    | -----          | 38     | 11                    | -----          | 41     |
| Jan. 21... | 7.54 a.m. | 29                        | -----          | 23     | 10                    | -----          | 42     | 7                     | -----          | 45     |
| Jan. 22... | 7.54 a.m. | 50                        | -----          | 2      | 7                     | -----          | 45     | 6                     | -----          | 46     |
| Jan. 23... | 7.54 a.m. | 21                        | -----          | 31     | 9                     | -----          | 43     | 9                     | -----          | 43     |
| Jan. 24... | 7.54 a.m. | 21                        | -----          | 31     | 5                     | -----          | 47     | 5                     | -----          | 47     |
| Jan. 25... | 7.54 a.m. | 22                        | -----          | 30     | 10                    | -----          | 42     | 7                     | -----          | 45     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.54 a.m. | 30                        | -----          | 22     | 15                    | -----          | 37     | 11                    | -----          | 41     |
| Jan. 28... | 7.54 a.m. | 33                        | -----          | 19     | 10                    | -----          | 42     | 5                     | -----          | 47     |
| Jan. 29... | 7.54 a.m. | 23                        | -----          | 29     | 10                    | -----          | 42     | 9                     | -----          | 43     |
| Jan. 30... | 7.54 a.m. | 28                        | -----          | 24     | 13                    | -----          | 39     | 10                    | -----          | 42     |
| Jan. 31... | 7.54 a.m. | 21                        | -----          | 31     | 12                    | -----          | 40     | 9                     | -----          | 43     |
| Jan. 20... | 8.14 a.m. | 20                        | -----          | 32     | 10                    | -----          | 42     | 7                     | -----          | 45     |
| Jan. 21... | 8.14 a.m. | 28                        | -----          | 24     | 9                     | -----          | 43     | 6                     | -----          | 46     |
| Jan. 22... | 8.14 a.m. | 14                        | -----          | 38     | 5                     | -----          | 47     | 2                     | -----          | 50     |
| Jan. 23... | 8.14 a.m. | 22                        | -----          | 30     | 10                    | -----          | 42     | 8                     | -----          | 44     |
| Jan. 24... | 8.14 a.m. | 22                        | -----          | 30     | 15                    | -----          | 37     | 14                    | -----          | 38     |
| Jan. 25... | 8.14 a.m. | 10                        | -----          | 42     | 8                     | -----          | 44     | 12                    | -----          | 40     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.14 a.m. | 19                        | -----          | 39     | 9                     | -----          | 43     | 5                     | -----          | 47     |
| Jan. 28... | 8.14 a.m. | 19                        | -----          | 33     | 12                    | -----          | 40     | 11                    | -----          | 41     |
| Jan. 29... | 8.14 a.m. | 14                        | -----          | 38     | 5                     | -----          | 47     | 8                     | -----          | 44     |
| Jan. 30... | 8.14 a.m. | 18                        | -----          | 34     | 7                     | -----          | 45     | 8                     | -----          | 44     |
| Jan. 31... | 8.14 a.m. | 24                        | -----          | 28     | 8                     | -----          | 44     | 5                     | -----          | 47     |
| Jan. 20... | 8.34 a.m. | 25                        | -----          | 27     | 17                    | -----          | 35     | 14                    | -----          | 38     |
| Jan. 21... | 8.34 a.m. | 24                        | -----          | 28     | 18                    | -----          | 34     | 12                    | -----          | 40     |
| Jan. 22... | 8.34 a.m. | 19                        | -----          | 33     | 9                     | -----          | 43     | 8                     | -----          | 44     |
| Jan. 23... | 8.34 a.m. | 15                        | -----          | 37     | 15                    | -----          | 37     | 13                    | -----          | 39     |
| Jan. 24... | 8.34 a.m. | 18                        | -----          | 34     | 23                    | -----          | 29     | 21                    | -----          | 31     |
| Jan. 25... | 8.34 a.m. | 14                        | -----          | 38     | 14                    | -----          | 38     | 17                    | -----          | 35     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.34 a.m. | 8                         | -----          | 44     | 10                    | -----          | 42     | 12                    | -----          | 40     |
| Jan. 28... | 8.34 a.m. | 17                        | -----          | 35     | 8                     | -----          | 44     | 7                     | -----          | 45     |
| Jan. 29... | 8.34 a.m. | 18                        | -----          | 34     | 12                    | -----          | 40     | 12                    | -----          | 40     |
| Jan. 30... | 8.34 a.m. | 21                        | -----          | 31     | 16                    | -----          | 36     | 3                     | -----          | 41     |
| Jan. 31... | 8.34 a.m. | 12                        | -----          | 40     | 10                    | -----          | 42     | 12                    | -----          | 40     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 8.59 a.m. | 34                        | -----          | 18     | 17                    | -----          | 35     | 17                    | -----          | 35     |
| Jan. 21... | 8.59 a.m. | 21                        | -----          | 31     | 7                     | -----          | 45     | 8                     | -----          | 44     |
| Jan. 22... | 8.59 a.m. | 23                        | -----          | 29     | 15                    | -----          | 37     | 13                    | -----          | 39     |
| Jan. 23... | 8.59 a.m. | 26                        | -----          | 26     | 14                    | -----          | 38     | 12                    | -----          | 40     |
| Jan. 24... | 8.59 a.m. | 27                        | -----          | 25     | 9                     | -----          | 43     | 12                    | -----          | 40     |
| Jan. 25... | 8.59 a.m. | 21                        | -----          | 31     | 11                    | -----          | 41     | 20                    | -----          | 32     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.59 a.m. | 37                        | -----          | 15     | 8                     | -----          | 44     | 9                     | -----          | 43     |
| Jan. 28... | 8.59 a.m. | 31                        | -----          | 21     | 16                    | -----          | 36     | 10                    | -----          | 42     |
| Jan. 29... | 8.59 a.m. | 34                        | -----          | 18     | 24                    | -----          | 28     | 16                    | -----          | 36     |
| Jan. 30... | 8.59 a.m. | 12                        | -----          | 40     | 1                     | -----          | 51     | 15                    | -----          | 37     |
| Jan. 31... | 8.59 a.m. | 17                        | -----          | 20     | 5                     | -----          | 47     | 4                     | -----          | 48     |
| Jan. 20... | 9.18 a.m. | 21                        | -----          | 31     | 16                    | -----          | 36     | 16                    | -----          | 36     |
| Jan. 21... | 9.18 a.m. | 40                        | -----          | 12     | 20                    | -----          | 32     | 16                    | -----          | 36     |
| Jan. 22... | 9.18 a.m. | 33                        | -----          | 19     | 18                    | -----          | 34     | 16                    | -----          | 36     |
| Jan. 23... | 9.18 a.m. | 23                        | -----          | 29     | 10                    | -----          | 42     | 6                     | -----          | 46     |
| Jan. 24... | 9.18 a.m. | 31                        | -----          | 21     | 25                    | -----          | 27     | 21                    | -----          | 31     |
| Jan. 25... | 9.18 a.m. | 24                        | -----          | 28     | 10                    | -----          | 42     | 6                     | -----          | 46     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.18 a.m. | 29                        | -----          | 23     | 2                     | -----          | 50     | 10                    | -----          | 42     |
| Jan. 28... | 9.18 a.m. | 35                        | -----          | 17     | 18                    | -----          | 34     | 15                    | -----          | 37     |
| Jan. 29... | 9.18 a.m. | 40                        | -----          | 12     | 18                    | -----          | 34     | 10                    | -----          | 43     |
| Jan. 30... | 9.18 a.m. | 28                        | -----          | 24     | 13                    | -----          | 39     | 14                    | -----          | 38     |
| Jan. 31... | 9.18 a.m. | 23                        | -----          | 29     | 16                    | -----          | 36     | 12                    | -----          | 40     |
| Jan. 20... | 9.38 a.m. | 32                        | -----          | 20     | 18                    | -----          | 34     | 9                     | -----          | 43     |
| Jan. 21... | 9.38 a.m. | 46                        | -----          | 6      | 41                    | -----          | 11     | 26                    | -----          | 26     |
| Jan. 22... | 9.38 a.m. | 32                        | -----          | 20     | 17                    | -----          | 35     | 17                    | -----          | 35     |
| Jan. 23... | 9.38 a.m. | 19                        | -----          | 33     | 10                    | -----          | 42     | 14                    | -----          | 38     |
| Jan. 24... | 9.38 a.m. | 36                        | -----          | 16     | 19                    | -----          | 33     | 16                    | -----          | 36     |
| Jan. 25... | 9.38 a.m. | 23                        | -----          | 29     | 22                    | -----          | 30     | 24                    | -----          | 28     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.38 a.m. | 28                        | -----          | 24     | 16                    | -----          | 36     | 16                    | -----          | 36     |
| Jan. 28... | 9.38 a.m. | 20                        | -----          | 32     | 12                    | -----          | 40     | 13                    | -----          | 39     |
| Jan. 29... | 9.38 a.m. | 28                        | -----          | 24     | 11                    | -----          | 41     | 31                    | -----          | 21     |
| Jan. 30... | 9.38 a.m. | 18                        | -----          | 34     | 20                    | -----          | 32     | 24                    | -----          | 28     |
| Jan. 31... | 9.38 a.m. | 33                        | -----          | 19     | 20                    | -----          | 24     | 19                    | -----          | 33     |
| Jan. 20... | 9.58 a.m. | 43                        | -----          | 9      | 16                    | -----          | 36     | 17                    | -----          | 35     |
| Jan. 21... | 9.58 a.m. | 29                        | -----          | 23     | 17                    | -----          | 35     | 15                    | -----          | 37     |
| Jan. 22... | 9.58 a.m. | 33                        | -----          | 19     | 15                    | -----          | 37     | 17                    | -----          | 35     |
| Jan. 23... | 9.58 a.m. | 38                        | -----          | 14     | 17                    | -----          | 35     | 5                     | -----          | 47     |
| Jan. 24... | 9.58 a.m. | 23                        | -----          | 29     | 4                     | -----          | 48     | 1                     | -----          | 51     |
| Jan. 25... | 9.58 a.m. | 42                        | -----          | 10     | 19                    | -----          | 33     | 23                    | -----          | 29     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.58 a.m. | 38                        | -----          | 14     | 10                    | -----          | 42     | 8                     | -----          | 44     |
| Jan. 28... | 9.58 a.m. | 30                        | -----          | 22     | 21                    | -----          | 31     | 12                    | -----          | 40     |
| Jan. 29... | 9.58 a.m. | 58                        | 6              | -----  | 26                    | -----          | 26     | 24                    | -----          | 28     |
| Jan. 30... | 9.58 a.m. | 29                        | -----          | 23     | 7                     | -----          | 45     | 8                     | -----          | 44     |
| Jan. 31... | 9.58 a.m. | 32                        | -----          | 20     | 16                    | -----          | 36     | 13                    | -----          | 39     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 10.18 a.m. | 39                        | -----          | 13     | 24                    | -----          | 28     | 14                    | -----          | 38     |
| Jan. 21... | 10.18 a.m. | 36                        | -----          | 16     | 19                    | -----          | 33     | 17                    | -----          | 35     |
| Jan. 22... | 10.18 a.m. | 34                        | -----          | 18     | 14                    | -----          | 32     | 8                     | -----          | 44     |
| Jan. 23... | 10.18 a.m. | 45                        | -----          | 7      | 6                     | -----          | 46     | 9                     | -----          | 43     |
| Jan. 24... | 10.18 a.m. | 48                        | -----          | 4      | 18                    | -----          | 34     | 13                    | -----          | 39     |
| Jan. 25... | 10.18 a.m. | 38                        | -----          | 14     | 17                    | -----          | 35     | 18                    | -----          | 34     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 18.18 a.m. | 27                        | -----          | 25     | 18                    | -----          | 34     | 14                    | -----          | 38     |
| Jan. 28... | 10.18 a.m. | 28                        | -----          | 24     | 14                    | -----          | 38     | 15                    | -----          | 37     |
| Jan. 29... | 10.18 a.m. | 46                        | -----          | 6      | 26                    | -----          | 32     | 18                    | -----          | 34     |
| Jan. 30... | 10.18 a.m. | 18                        | -----          | 34     | 8                     | -----          | 44     | 8                     | -----          | 44     |
| Jan. 31... | 10.18 a.m. | 31                        | -----          | 21     | 11                    | -----          | 41     | 14                    | -----          | 38     |
| Jan. 20... | 10.38 a.m. | 58                        | 6              | -----  | 10                    | -----          | 42     | 10                    | -----          | 42     |
| Jan. 21... | 10.38 a.m. | 41                        | -----          | 11     | 31                    | -----          | 21     | 22                    | -----          | 30     |
| Jan. 22... | 10.38 a.m. | 32                        | -----          | 20     | 22                    | -----          | 30     | 18                    | -----          | 34     |
| Jan. 23... | 10.38 a.m. | 59                        | 7              | -----  | 26                    | -----          | 26     | 14                    | -----          | 38     |
| Jan. 24... | 10.38 a.m. | 43                        | -----          | 9      | 32                    | -----          | 20     | 16                    | -----          | 36     |
| Jan. 25... | 10.38 a.m. | 48                        | -----          | 4      | 7                     | -----          | 45     | 14                    | -----          | 38     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.38 a.m. | 37                        | -----          | 15     | 18                    | -----          | 34     | 18                    | -----          | 34     |
| Jan. 28... | 10.38 a.m. | 30                        | -----          | 22     | 15                    | -----          | 37     | 11                    | -----          | 41     |
| Jan. 29... | 10.38 a.m. | 45                        | -----          | 7      | 32                    | -----          | 20     | 28                    | -----          | 24     |
| Jan. 30... | 10.38 a.m. | 32                        | -----          | 20     | 13                    | -----          | 39     | 12                    | -----          | 40     |
| Jan. 31... | 10.38 a.m. | 52                        | -----          |        | 23                    | -----          | 29     | 16                    | -----          | 36     |
| Jan. 20... | 10.58 a.m. | 31                        | -----          | 21     | 15                    | -----          | 37     | 19                    | -----          | 33     |
| Jan. 21... | 10.58 a.m. | 36                        | -----          | 16     | 30                    | -----          | 22     | 25                    | -----          | 27     |
| Jan. 22... | 10.58 a.m. | 45                        | -----          | 7      | 14                    | -----          | 38     | 14                    | -----          | 38     |
| Jan. 23... | 10.58 a.m. | 40                        | -----          | 12     | 28                    | -----          | 24     | 12                    | -----          | 40     |
| Jan. 24... | 10.58 a.m. | 70                        | 18             | -----  | 22                    | -----          | 30     | 23                    | -----          | 29     |
| Jan. 25... | 10.58 a.m. | 49                        | -----          | 3      | 18                    | -----          | 34     | 15                    | -----          | 37     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.58 a.m. | 39                        | -----          | 13     | 26                    | -----          | 26     | 21                    | -----          | 31     |
| Jan. 28... | 10.58 a.m. | 40                        | -----          | 12     | 14                    | -----          | 38     | 13                    | -----          | 39     |
| Jan. 29... | 10.58 a.m. | 75                        | 23             | -----  | 18                    | -----          | 34     | 15                    | -----          | 37     |
| Jan. 30... | 10.58 a.m. | 24                        | -----          | 28     | 17                    | -----          | 35     | 13                    | -----          | 39     |
| Jan. 31... | 10.58 a.m. | 47                        | -----          | 5      | 23                    | -----          | 29     | 20                    | -----          | 32     |
| Jan. 20... | 11.18 a.m. | 34                        | 18             | -----  | 15                    | -----          | 37     | 15                    | -----          | 37     |
| Jan. 21... | 11.18 a.m. | 31                        | -----          | 21     | 16                    | -----          | 36     | 11                    | -----          | 41     |
| Jan. 22... | 11.18 a.m. | 43                        | -----          | 9      | 10                    | -----          | 42     | 12                    | -----          | 40     |
| Jan. 23... | 11.18 a.m. | 38                        | -----          | 14     | 15                    | -----          | 37     | 11                    | -----          | 41     |
| Jan. 24... | 11.18 a.m. | 36                        | -----          | 16     | 17                    | -----          | 35     | 8                     | -----          | 44     |
| Jan. 25... | 11.18 a.m. | 40                        | -----          | 12     | 10                    | -----          | 42     | 11                    | -----          | 41     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.18 a.m. | 34                        | -----          | 18     | 15                    | -----          | 37     | 18                    | -----          | 34     |
| Jan. 28... | 11.18 a.m. | 40                        | -----          | 12     | 22                    | -----          | 30     | 15                    | -----          | 37     |
| Jan. 29... | 11.18 a.m. | 52                        | -----          |        | 27                    | -----          | 25     | 22                    | -----          | 30     |
| Jan. 30... | 11.18 a.m. | 30                        | -----          | 22     | 9                     | -----          | 43     | 12                    | -----          | 40     |
| Jan. 31... | 11.18 a.m. | 45                        | -----          | 7      | 17                    | -----          | 35     | 14                    | -----          | 38     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 11.38 a.m. | 17                        | -----          | 35     | 13                    | -----          | 39     | 13                    | -----          | 39     |
| Jan. 21... | 11.38 a.m. | 32                        | -----          | 20     | 19                    | -----          | 33     | 11                    | -----          | 41     |
| Jan. 22... | 11.38 a.m. | 44                        | -----          | 8      | 16                    | -----          | 36     | 10                    | -----          | 42     |
| Jan. 23... | 11.38 a.m. | 18                        | -----          | 34     | 18                    | -----          | 34     | 14                    | -----          | 38     |
| Jan. 24... | 11.38 a.m. | 31                        | -----          | 21     | 25                    | -----          | 27     | 25                    | -----          | 27     |
| Jan. 25... | 11.38 a.m. | 56                        | 4              | -----  | 18                    | -----          | 34     | 9                     | -----          | 43     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.38 a.m. | 42                        | -----          | 10     | 33                    | -----          | 19     | 26                    | -----          | 26     |
| Jan. 28... | 11.38 a.m. | 51                        | -----          | 1      | 27                    | -----          | 25     | 22                    | -----          | 30     |
| Jan. 29... | 11.38 a.m. | 40                        | -----          | 12     | 1                     | -----          | 51     | 7                     | -----          | 45     |
| Jan. 30... | 11.38 a.m. | 41                        | -----          | 11     | 26                    | -----          | 26     | 13                    | -----          | 39     |
| Jan. 31... | 11.38 a.m. | 42                        | -----          | 10     | 15                    | -----          | 37     | 16                    | -----          | 36     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 11.58 a.m. | 49                        | -----          | 3      | 15                    | -----          | 37     | 13                    | -----          | 39     |
| Jan. 21... | 11.58 a.m. | 38                        | -----          | 14     | 15                    | -----          | 37     | 13                    | -----          | 39     |
| Jan. 22... | 11.58 a.m. | 40                        | -----          | 12     | 13                    | -----          | 39     | 15                    | -----          | 37     |
| Jan. 23... | 11.58 a.m. | 56                        | 4              | -----  | 21                    | -----          | 31     | -----                 | -----          | 52     |
| Jan. 24... | 11.58 a.m. | 32                        | -----          | 20     | 1                     | -----          | 51     | 11                    | -----          | 41     |
| Jan. 25... | 11.58 a.m. | 50                        | -----          | 2      | 23                    | -----          | 29     | 19                    | -----          | 33     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.58 a.m. | 12                        | -----          | 40     | 8                     | -----          | 44     | 10                    | -----          | 42     |
| Jan. 28... | 11.58 a.m. | 43                        | -----          | 9      | 19                    | -----          | 33     | 17                    | -----          | 35     |
| Jan. 29... | 11.58 a.m. | 40                        | -----          | 12     | 24                    | -----          | 28     | 22                    | -----          | 30     |
| Jan. 30... | 11.58 a.m. | 26                        | -----          | 26     | 8                     | -----          | 44     | 10                    | -----          | 42     |
| Jan. 31... | 11.58 a.m. | 42                        | -----          | 10     | 10                    | -----          | 42     | 11                    | -----          | 41     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 12.18 p.m. | 49                        | -----          | 3      | 20                    | -----          | 33     | 11                    | -----          | 41     |
| Jan. 21... | 12.18 p.m. | 47                        | -----          | 5      | 24                    | -----          | 28     | 12                    | -----          | 40     |
| Jan. 22... | 12.18 p.m. | 36                        | -----          | 16     | 20                    | -----          | 32     | 12                    | -----          | 40     |
| Jan. 23... | 12.18 p.m. | 46                        | -----          | 6      | 22                    | -----          | 30     | 16                    | -----          | 36     |
| Jan. 24... | 12.18 p.m. | 25                        | -----          | 27     | 8                     | -----          | 44     | 7                     | -----          | 45     |
| Jan. 25... | 12.18 p.m. | 50                        | -----          | 2      | 18                    | -----          | 34     | 21                    | -----          | 31     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 12.18 p.m. | 40                        | -----          | 12     | 14                    | -----          | 38     | 8                     | -----          | 44     |
| Jan. 28... | 12.18 p.m. | 31                        | -----          | 21     | 11                    | -----          | 41     | 10                    | -----          | 42     |
| Jan. 29... | 12.18 p.m. | 32                        | -----          | 20     | 15                    | -----          | 37     | 13                    | -----          | 39     |
| Jan. 30... | 12.18 p.m. | 56                        | -----          | 16     | 24                    | -----          | 28     | 10                    | -----          | 42     |
| Jan. 31... | 12.18 p.m. | 54                        | 2              | -----  | 20                    | -----          | 32     | 14                    | -----          | 38     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 12.38 p.m. | 22                        | -----          | 30     | 15                    | -----          | 37     | 11                    | -----          | 41     |
| Jan. 21... | 12.38 p.m. | 52                        | -----          | -----  | 23                    | -----          | 28     | 17                    | -----          | 35     |
| Jan. 22... | 12.38 p.m. | 41                        | -----          | 11     | 10                    | -----          | 42     | 6                     | -----          | 46     |
| Jan. 23... | 12.58 p.m. | 41                        | -----          | 11     | 18                    | -----          | 34     | 19                    | -----          | 33     |
| Jan. 24... | 12.38 p.m. | 39                        | -----          | 13     | 13                    | -----          | 39     | 8                     | -----          | 44     |
| Jan. 25... | 12.38 p.m. | 47                        | -----          | 5      | 20                    | -----          | 32     | 10                    | -----          | 42     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 12.38 p.m. | 31                        | -----          | 21     | 13                    | -----          | 39     | 12                    | -----          | 40     |
| Jan. 28... | 12.38 p.m. | 28                        | -----          | 24     | 17                    | -----          | 35     | 9                     | -----          | 43     |
| Jan. 29... | 12.38 p.m. | 44                        | -----          | 8      | 16                    | -----          | 36     | 12                    | -----          | 40     |
| Jan. 30... | 12.38 p.m. | 55                        | 3              | -----  | 18                    | -----          | 34     | 14                    | -----          | 38     |
| Jan. 31... | 12.38 p.m. | 40                        | -----          | 12     | 18                    | -----          | 34     | 13                    | -----          | 39     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 12.58 p.m. | 55                        | 3              | -----  | 13                    | -----          | 39     | 11                    | -----          | 41     |
| Jan. 21... | 12.58 p.m. | 42                        | -----          | 10     | 7                     | -----          | 45     | 4                     | -----          | 48     |
| Jan. 22... | 12.58 p.m. | 25                        | -----          | 27     | 7                     | -----          | 45     | 4                     | -----          | 48     |
| Jan. 23... | 12.58 p.m. | 34                        | -----          | 18     | 14                    | -----          | 38     | 12                    | -----          | 40     |
| Jan. 24... | 12.58 p.m. | 25                        | -----          | 27     | 28                    | -----          | 24     | 18                    | -----          | 34     |
| Jan. 25... | 12.58 p.m. | 18                        | -----          | 34     | 43                    | -----          | 9      | 52                    | -----          | -----  |
| Jan. 26... | Sunday     | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 12.58 p.m. | 25                        | -----          | 27     | 12                    | -----          | 40     | 11                    | -----          | 41     |
| Jan. 28... | 12.58 p.m. | 49                        | -----          | 3      | 24                    | -----          | 28     | 24                    | -----          | 28     |
| Jan. 29... | 12.58 p.m. | 68                        | 16             | -----  | 33                    | -----          | 19     | 22                    | -----          | 30     |
| Jan. 30... | 12.58 p.m. | 51                        | -----          | 1      | 12                    | -----          | 40     | 10                    | -----          | 42     |
| Jan. 31... | 12.58 p.m. | 45                        | -----          | 7      | 28                    | -----          | 24     | 23                    | -----          | 29     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 1.18 p.m.  | 84                        | 32             | -----  | 25                    | -----          | 27     | 31                    | -----          | 21     |
| Jan. 21... | 1.18 p.m.  | 59                        | 7              | -----  | 20                    | -----          | 32     | 12                    | -----          | 40     |
| Jan. 22... | 1.18 p.m.  | 41                        | 11             | 11     | 28                    | -----          | 24     | 10                    | -----          | 42     |
| Jan. 23... | 1.18 p.m.  | 44                        | -----          | 8      | 20                    | -----          | 32     | 10                    | -----          | 42     |
| Jan. 24... | 1.18 p.m.  | 48                        | -----          | 4      | 11                    | -----          | 41     | 14                    | -----          | 38     |
| Jan. 25... | 1.18 p.m.  | 63                        | 11             | -----  | 28                    | -----          | 24     | 19                    | -----          | 33     |
| Jan. 26... | Sunday     | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 1.18 p.m.  | 31                        | -----          | 21     | 19                    | -----          | 33     | 16                    | -----          | 36     |
| Jan. 28... | 1.18 p.m.  | 48                        | -----          | 4      | 14                    | -----          | 38     | 20                    | -----          | 32     |
| Jan. 29... | 1.18 p.m.  | 37                        | -----          | 15     | 12                    | -----          | 40     | 12                    | -----          | 40     |
| Jan. 30... | 1.18 p.m.  | 43                        | -----          | 9      | 29                    | -----          | 23     | 16                    | -----          | 36     |
| Jan. 31... | 1.18 p.m.  | 51                        | -----          | 1      | 22                    | -----          | 30     | 20                    | -----          | 32     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 1.38 p.m.  | 47                        | -----          | 5      | 25                    | -----          | 37     | 19                    | -----          | 33     |
| Jan. 21... | 1.38 p.m.  | 65                        | 13             | -----  | 25                    | -----          | 27     | 21                    | -----          | 31     |
| Jan. 22... | 1.38 p.m.  | 58                        | 6              | -----  | 31                    | -----          | 21     | 11                    | -----          | 41     |
| Jan. 23... | 1.38 p.m.  | 72                        | 20             | -----  | 26                    | -----          | 26     | 27                    | -----          | 25     |
| Jan. 24... | 1.38 p.m.  | 38                        | -----          | 14     | 22                    | -----          | 30     | 16                    | -----          | 36     |
| Jan. 25... | 1.38 p.m.  | 75                        | 23             | -----  | 30                    | -----          | 22     | 17                    | -----          | 35     |
| Jan. 26... | Sunday     | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 1.38 p.m.  | 49                        | -----          | 3      | 34                    | -----          | 28     | 29                    | -----          | 23     |
| Jan. 28... | 1.38 p.m.  | 48                        | -----          | 4      | 30                    | -----          | 22     | 19                    | -----          | 33     |
| Jan. 29... | 1.38 p.m.  | 44                        | -----          | 8      | 12                    | -----          | 40     | 19                    | -----          | 33     |
| Jan. 30... | 1.38 p.m.  | 50                        | -----          | 2      | 23                    | -----          | 29     | 16                    | -----          | 36     |
| Jan. 31... | 1.38 p.m.  | 73                        | 21             | -----  | 28                    | -----          | 24     | 23                    | -----          | 29     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 1.58 p.m.  | 57                        | 5              | -----  | 27                    | -----          | 25     | 21                    | -----          | 31     |
| Jan. 21... | 1.58 p.m.  | 62                        | 10             | -----  | 38                    | -----          | 14     | 18                    | -----          | 34     |
| Jan. 22... | 1.58 p.m.  | 52                        | -----          | -----  | 18                    | -----          | 34     | 19                    | -----          | 33     |
| Jan. 23... | 1.58 p.m.  | 31                        | -----          | 21     | 14                    | -----          | 38     | 12                    | -----          | 40     |
| Jan. 24... | 1.58 p.m.  | 39                        | -----          | 13     | 17                    | -----          | 35     | 6                     | -----          | 46     |
| Jan. 25... | 1.58 p.m.  | 65                        | 13             | -----  | 35                    | -----          | 17     | 18                    | -----          | 34     |
| Jan. 26... | Sunday     | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 1.58 p.m.  | 61                        | 9              | -----  | 18                    | -----          | 34     | 14                    | -----          | 38     |
| Jan. 28... | 1.58 p.m.  | 42                        | -----          | 10     | 18                    | -----          | 34     | 14                    | -----          | 38     |
| Jan. 29... | 1.58 p.m.  | 59                        | 7              | -----  | 23                    | -----          | 29     | 18                    | -----          | 34     |
| Jan. 30... | 1.58 p.m.  | 47                        | -----          | 5      | 24                    | -----          | 28     | 15                    | -----          | 37     |
| Jan. 31... | 1.58 p.m.  | 30                        | -----          | 22     | 24                    | -----          | 28     | 19                    | -----          | 22     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 2.18 p.m. | 54                        | 2              | -----  | 21                    | -----          | 31     | 19                    | -----          | 33     |
| Jan. 21... | 2.18 p.m. | 42                        | -----          | 10     | 20                    | -----          | 32     | 15                    | -----          | 37     |
| Jan. 22... | 2.18 p.m. | 53                        | 1              | -----  | 28                    | -----          | 24     | 16                    | -----          | 36     |
| Jan. 23... | 2.18 p.m. | 68                        | 16             | -----  | 40                    | -----          | 12     | 17                    | -----          | 35     |
| Jan. 24... | 2.18 p.m. | 53                        | 1              | -----  | 10                    | -----          | 42     | 9                     | -----          | 43     |
| Jan. 25... | 2.18 p.m. | 68                        | 16             | -----  | 43                    | -----          | 9      | 31                    | -----          | 21     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 2.18 p.m. | 40                        | -----          | 12     | 32                    | -----          | 20     | 17                    | -----          | 35     |
| Jan. 28... | 2.18 p.m. | 56                        | 4              | -----  | 25                    | -----          | 27     | 19                    | -----          | 33     |
| Jan. 29... | 2.18 p.m. | 62                        | 10             | -----  | 24                    | -----          | 28     | 20                    | -----          | 32     |
| Jan. 30... | 2.18 p.m. | 32                        | -----          | 20     | 21                    | -----          | 31     | 17                    | -----          | 35     |
| Jan. 31... | 2.18 p.m. | 77                        | 25             | -----  | 27                    | -----          | 25     | -----                 | -----          | 52     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 2.38 p.m. | 60                        | 8              | -----  | 35                    | -----          | 17     | 29                    | -----          | 23     |
| Jan. 21... | 2.38 p.m. | 45                        | -----          | 7      | 20                    | -----          | 32     | 13                    | -----          | 39     |
| Jan. 22... | 2.38 p.m. | 66                        | 14             | -----  | 32                    | -----          | 20     | 22                    | -----          | 30     |
| Jan. 23... | 2.38 p.m. | 41                        | -----          | 11     | 14                    | -----          | 38     | 2                     | -----          | 50     |
| Jan. 24... | 2.38 p.m. | 62                        | 10             | -----  | 33                    | -----          | 19     | 28                    | -----          | 24     |
| Jan. 25... | 2.38 p.m. | 51                        | -----          | 1      | 44                    | -----          | 8      | 33                    | -----          | 19     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 2.38 p.m. | 43                        | -----          | 9      | 35                    | -----          | 17     | 33                    | -----          | 29     |
| Jan. 28... | 2.38 p.m. | 55                        | 3              | -----  | 25                    | -----          | 27     | 21                    | -----          | 31     |
| Jan. 29... | 2.38 p.m. | 68                        | 16             | -----  | 37                    | -----          | 15     | 24                    | -----          | 28     |
| Jan. 30... | 2.38 p.m. | 59                        | 7              | -----  | 32                    | -----          | 20     | 20                    | -----          | 32     |
| Jan. 31... | 2.38 p.m. | 44                        | -----          | 8      | 32                    | -----          | 20     | 17                    | -----          | 35     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 2.58 p.m. | 22                        | -----          | 30     | 22                    | -----          | 30     | 18                    | -----          | 34     |
| Jan. 21... | 2.58 p.m. | 41                        | -----          | 11     | 27                    | -----          | 25     | 25                    | -----          | 27     |
| Jan. 22... | 2.58 p.m. | 47                        | -----          | 5      | 41                    | -----          | 11     | 21                    | -----          | 31     |
| Jan. 23... | 2.58 p.m. | 52                        | -----          | -----  | 42                    | -----          | 10     | 32                    | -----          | 20     |
| Jan. 24... | 2.58 p.m. | 59                        | 7              | -----  | 26                    | -----          | 26     | 24                    | -----          | 38     |
| Jan. 25... | 2.58 p.m. | 62                        | 10             | -----  | 30                    | -----          | 22     | 29                    | -----          | 23     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 2.58 p.m. | 57                        | 5              | -----  | 35                    | -----          | 17     | 21                    | -----          | 31     |
| Jan. 28... | 2.58 p.m. | 56                        | 4              | -----  | 23                    | -----          | 29     | 18                    | -----          | 34     |
| Jan. 29... | 2.58 p.m. | 65                        | 13             | -----  | 34                    | -----          | 18     | 30                    | -----          | 22     |
| Jan. 30... | 2.58 p.m. | 49                        | -----          | 3      | 24                    | -----          | 28     | 23                    | -----          | 29     |
| Jan. 31... | 2.58 p.m. | 66                        | 14             | -----  | 18                    | -----          | 34     | 16                    | -----          | 36     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 3.18 p.m. | 76                        | 24             | -----  | 50                    | -----          | 2      | 26                    | -----          | 26     |
| Jan. 21... | 3.18 p.m. | 58                        | 6              | -----  | 26                    | -----          | 26     | 26                    | -----          | 31     |
| Jan. 22... | 3.18 p.m. | 45                        | -----          | 7      | 14                    | -----          | 38     | 13                    | -----          | 39     |
| Jan. 23... | 3.18 p.m. | 70                        | 18             | -----  | 20                    | -----          | 32     | 8                     | -----          | 44     |
| Jan. 24... | 3.18 p.m. | 54                        | 2              | -----  | 26                    | -----          | 26     | 11                    | -----          | 41     |
| Jan. 25... | 3.18 p.m. | 48                        | -----          | 4      | 40                    | -----          | 12     | 33                    | -----          | 19     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 3.18 p.m. | 61                        | 9              | -----  | 35                    | -----          | 17     | 29                    | -----          | 23     |
| Jan. 28... | 3.18 p.m. | 60                        | 8              | -----  | 33                    | -----          | 19     | 19                    | -----          | 33     |
| Jan. 29... | 3.18 p.m. | 85                        | 33             | -----  | 31                    | -----          | 21     | 29                    | -----          | 23     |
| Jan. 30... | 3.18 p.m. | 62                        | 10             | -----  | 24                    | -----          | 28     | 14                    | -----          | 28     |
| Jan. 31... | 3.18 p.m. | 62                        | 10             | -----  | 26                    | -----          | 26     | 14                    | -----          | 38     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 3.36 p.m. | 73                        | 21             | -----  | 53                    | 1              | -----  | 32                    | -----          | 20     |
| Jan. 21... | 3.36 p.m. | 62                        | 10             | -----  | 30                    | -----          | 22     | 24                    | -----          | 28     |
| Jan. 22... | 3.36 p.m. | 70                        | 18             | -----  | 32                    | -----          | 20     | 17                    | -----          | 35     |
| Jan. 23... | 3.36 p.m. | 42                        | -----          | 10     | 32                    | -----          | 20     | 20                    | -----          | 32     |
| Jan. 24... | 3.36 p.m. | 69                        | 17             | -----  | 22                    | -----          | 30     | 31                    | -----          | 21     |
| Jan. 25... | 3.36 p.m. | 67                        | 15             | -----  | 45                    | -----          | 7      | 30                    | -----          | 22     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 3.36 p.m. | 43                        | -----          | 9      | 35                    | -----          | 17     | 23                    | -----          | 29     |
| Jan. 28... | 3.36 p.m. | 52                        | -----          | -----  | 25                    | -----          | 27     | 18                    | -----          | 34     |
| Jan. 29... | 3.36 p.m. | 29                        | -----          | 23     | 22                    | -----          | 30     | 14                    | -----          | 38     |
| Jan. 30... | 3.36 p.m. | 80                        | 28             | -----  | 32                    | -----          | 20     | 25                    | -----          | 27     |
| Jan. 31... | 3.36 p.m. | 60                        | 8              | -----  | 26                    | -----          | 26     | 24                    | -----          | 28     |
| Jan. 20... | 3.56 p.m. | 54                        | 2              | -----  | 48                    | -----          | 4      | 37                    | -----          | 16     |
| Jan. 21... | 3.56 p.m. | 60                        | 8              | -----  | 32                    | -----          | 20     | 34                    | -----          | 18     |
| Jan. 22... | 3.56 p.m. | 80                        | 28             | -----  | 42                    | -----          | 10     | 38                    | -----          | 14     |
| Jan. 23... | 3.56 p.m. | 53                        | 1              | -----  | 25                    | -----          | 27     | 28                    | -----          | 24     |
| Jan. 24... | 3.56 p.m. | 56                        | 4              | -----  | 26                    | -----          | 30     | 18                    | -----          | 34     |
| Jan. 25... | 3.56 p.m. | 57                        | 5              | -----  | 33                    | -----          | 19     | 34                    | -----          | 18     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 3.56 p.m. | 31                        | -----          | 21     | 29                    | -----          | 23     | 28                    | -----          | 24     |
| Jan. 28... | 3.56 p.m. | 54                        | 2              | -----  | 50                    | -----          | 2      | 38                    | -----          | 14     |
| Jan. 29... | 3.56 p.m. | 57                        | 5              | -----  | 33                    | -----          | 19     | 34                    | -----          | 18     |
| Jan. 30... | 3.56 p.m. | 23                        | -----          | 29     | 37                    | -----          | 15     | 28                    | -----          | 24     |
| Jan. 31... | 3.56 p.m. | 41                        | -----          | 11     | 32                    | -----          | 20     | 23                    | -----          | 29     |
| Jan. 20... | 4.16 p.m. | 60                        | 8              | -----  | 35                    | -----          | 17     | 42                    | -----          | 9      |
| Jan. 21... | 4.16 p.m. | 78                        | 25             | -----  | 46                    | -----          | 6      | 30                    | -----          | 22     |
| Jan. 22... | 4.16 p.m. | 70                        | 18             | -----  | 42                    | -----          | 10     | 31                    | -----          | 21     |
| Jan. 23... | 4.16 p.m. | 73                        | 21             | -----  | 33                    | -----          | 19     | 35                    | -----          | 17     |
| Jan. 24... | 4.16 p.m. | 50                        | -----          | 2      | 38                    | -----          | 14     | 29                    | -----          | 23     |
| Jan. 25... | 4.16 p.m. | 63                        | 11             | -----  | 58                    | 6              | -----  | 43                    | -----          | 9      |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 4.16 p.m. | 43                        | -----          | 9      | 39                    | -----          | 13     | 31                    | -----          | 21     |
| Jan. 28... | 4.16 p.m. | 90                        | 38             | -----  | 38                    | -----          | 14     | 42                    | -----          | 10     |
| Jan. 29... | 4.16 p.m. | 74                        | 22             | -----  | 55                    | 3              | -----  | 34                    | -----          | 18     |
| Jan. 30... | 4.16 p.m. | 69                        | 17             | -----  | 48                    | -----          | 4      | 36                    | -----          | 16     |
| Jan. 31... | 4.16 p.m. | 62                        | 10             | -----  | 49                    | -----          | 3      | 40                    | -----          | 12     |
| Jan. 20... | 4.36 p.m. | 94                        | 42             | -----  | 42                    | -----          | 10     | 36                    | -----          | 16     |
| Jan. 21... | 4.36 p.m. | 73                        | 21             | -----  | 22                    | -----          | 30     | 24                    | -----          | 28     |
| Jan. 22... | 4.36 p.m. | 76                        | 24             | -----  | 37                    | -----          | 15     | 23                    | -----          | 29     |
| Jan. 23... | 4.36 p.m. | 90                        | 38             | -----  | 50                    | -----          | 2      | 33                    | -----          | 19     |
| Jan. 24... | 4.36 p.m. | 44                        | 8              | -----  | 59                    | 7              | -----  | 46                    | -----          | 6      |
| Jan. 25... | 4.36 p.m. | 68                        | 16             | -----  | 52                    | -----          | -----  | 34                    | -----          | 18     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 4.36 p.m. | 40                        | -----          | 12     | 50                    | -----          | 2      | 28                    | -----          | 24     |
| Jan. 28... | 4.36 p.m. | 80                        | 28             | -----  | 35                    | -----          | 17     | 30                    | -----          | 22     |
| Jan. 29... | 4.36 p.m. | 74                        | 22             | -----  | 43                    | -----          | 9      | 32                    | -----          | 20     |
| Jan. 30... | 4.36 p.m. | 75                        | 23             | -----  | 43                    | -----          | 9      | 35                    | -----          | 17     |
| Jan. 31... | 4.36 p.m. | 43                        | -----          | 9      | 48                    | -----          | 4      | 30                    | -----          | 22     |

## OVERLOADING OF CARS—Continued.

| Date.       | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|-------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|             |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| *Jan. 20... | 4.57 p.m. | 30                        | -----          | 22     | 28                    | -----          | 24     | 16                    | -----          | 36     |
| Jan. 21...  | 4.57 p.m. | 32                        | -----          | 20     | 33                    | -----          | 19     | 12                    | -----          | 40     |
| Jan. 22...  | 4.57 p.m. | 32                        | -----          | 19     | 28                    | -----          | 24     | 20                    | -----          | 32     |
| Jan. 23...  | 4.57 p.m. | 33                        | -----          | 19     | 30                    | -----          | 22     | 16                    | -----          | 36     |
| Jan. 24...  | 4.57 p.m. | 41                        | -----          | 11     | 43                    | -----          | 9      | 20                    | -----          | 32     |
| Jan. 25...  | 4.57 p.m. | 20                        | -----          | 32     | 28                    | -----          | 24     | 17                    | -----          | 34     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 4.57 p.m. | 32                        | -----          | 20     | 31                    | -----          | 21     | 21                    | -----          | 31     |
| Jan. 28...  | 4.57 p.m. | 11                        | -----          | 41     | 14                    | -----          | 38     | 8                     | -----          | 44     |
| Jan. 29...  | 4.57 p.m. | 22                        | -----          | 30     | 22                    | -----          | 30     | 13                    | -----          | 39     |
| Jan. 30...  | 4.57 p.m. | 32                        | -----          | 20     | 23                    | -----          | 29     | 17                    | -----          | 35     |
| Jan. 31...  | 4.57 p.m. | 25                        | -----          | 27     | 31                    | -----          | 21     | 17                    | -----          | 35     |
| Jan. 20...  | 4.56 p.m. | 72                        | 20             | -----  | 20                    | -----          | 32     | 10                    | -----          | 40     |
| Jan. 21...  | 4.56 p.m. | 52                        | -----          | -----  | 44                    | -----          | 8      | 38                    | -----          | 14     |
| Jan. 22...  | 4.56 p.m. | 71                        | 19             | -----  | 35                    | -----          | 17     | 23                    | -----          | 29     |
| Jan. 23...  | 4.56 p.m. | 60                        | 8              | -----  | 32                    | -----          | 20     | 15                    | -----          | 37     |
| Jan. 24...  | 4.56 p.m. | 71                        | 19             | -----  | 12                    | -----          | 40     | 7                     | -----          | 45     |
| Jan. 25...  | 4.56 p.m. | 119                       | 67             | -----  | 16                    | -----          | 36     | 18                    | -----          | 34     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 4.56 p.m. | 97                        | 45             | -----  | 59                    | 7              | -----  | 45                    | -----          | 7      |
| Jan. 28...  | 4.56 p.m. | 76                        | 24             | -----  | 42                    | -----          | 10     | 31                    | -----          | 21     |
| Jan. 29...  | 4.56 p.m. | 61                        | 9              | -----  | 39                    | -----          | 13     | 28                    | -----          | 24     |
| Jan. 30...  | 4.56 p.m. | 74                        | 22             | -----  | 26                    | -----          | 26     | 17                    | -----          | 35     |
| Jan. 31...  | 4.56 p.m. | 44                        | -----          | 8      | 36                    | -----          | 16     | 24                    | -----          | 28     |
| Jan. 20...  | 5.36 p.m. | 84                        | 32             | -----  | 40                    | -----          | 12     | 30                    | -----          | 22     |
| Jan. 21...  | 5.36 p.m. | 100                       | 48             | -----  | 33                    | -----          | 19     | 16                    | -----          | 36     |
| Jan. 22...  | 5.36 p.m. | 71                        | 19             | -----  | 38                    | -----          | 14     | 34                    | -----          | 18     |
| Jan. 23...  | 5.36 p.m. | 65                        | 13             | -----  | 34                    | -----          | 18     | 17                    | -----          | 35     |
| Jan. 24...  | 5.36 p.m. | 90                        | 38             | -----  | 21                    | -----          | 31     | 17                    | -----          | 35     |
| Jan. 25...  | 5.36 p.m. | 43                        | -----          | 9      | 12                    | -----          | 40     | 8                     | -----          | 44     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 5.36 p.m. | 61                        | 9              | -----  | 36                    | -----          | 16     | 19                    | -----          | 33     |
| Jan. 28...  | 5.36 p.m. | 79                        | 27             | -----  | 32                    | -----          | 20     | 21                    | -----          | 31     |
| Jan. 29...  | 5.36 p.m. | 71                        | 19             | -----  | 30                    | -----          | 22     | 20                    | -----          | 32     |
| Jan. 30...  | 5.36 p.m. | 72                        | 20             | -----  | 37                    | -----          | 15     | 26                    | -----          | 26     |
| Jan. 31...  | 5.36 p.m. | 47                        | -----          | 5      | 34                    | -----          | 18     | 15                    | -----          | 37     |
| *Jan. 20... | 5.59 p.m. | 36                        | -----          | 16     | 35                    | -----          | 17     | 13                    | -----          | 39     |
| Jan. 21...  | 5.59 p.m. | 27                        | -----          | 25     | 19                    | -----          | 33     | 14                    | -----          | 38     |
| Jan. 22...  | 5.59 p.m. | 21                        | -----          | 31     | 20                    | -----          | 32     | 9                     | -----          | 43     |
| Jan. 23...  | 5.59 p.m. | 27                        | -----          | 25     | 22                    | -----          | 30     | 13                    | -----          | 29     |
| Jan. 24...  | 5.59 p.m. | 29                        | -----          | 23     | 22                    | -----          | 30     | 9                     | -----          | 43     |
| Jan. 25...  | 5.59 p.m. | 27                        | -----          | 25     | 26                    | -----          | 26     | 11                    | -----          | 41     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 5.59 p.m. | 32                        | -----          | 20     | 44                    | -----          | 8      | 9                     | -----          | 43     |
| Jan. 28...  | 5.59 p.m. | 22                        | -----          | 30     | 21                    | -----          | 31     | 4                     | -----          | 48     |
| Jan. 29...  | 5.59 p.m. | 32                        | -----          | 20     | 26                    | -----          | 26     | 14                    | -----          | 38     |
| Jan. 30...  | 5.59 p.m. | 29                        | -----          | 23     | 39                    | -----          | 13     | 9                     | -----          | 43     |
| Jan. 31...  | 5.59 p.m. | 26                        | -----          | 26     | 24                    | -----          | 28     | 7                     | -----          | 45     |

\*Extra, Twelfth and Broadway.



## OVERLOADING OF CARS—Continued.

| Date.       | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|-------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|             |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20...  | 5.56 p.m. | 79                        | 27             | -----  | 23                    | -----          | 29     | 18                    | -----          | 34     |
| Jan. 21...  | 5.56 p.m. | 83                        | 31             | -----  | 39                    | -----          | 13     | 27                    | -----          | 25     |
| Jan. 22...  | 5.56 p.m. | 42                        | -----          | 10     | 23                    | -----          | 29     | 8                     | -----          | 44     |
| Jan. 23...  | 5.56 p.m. | 81                        | 29             | -----  | 23                    | -----          | 29     | 18                    | -----          | 34     |
| Jan. 24...  | 5.56 p.m. | 69                        | 17             | -----  | 24                    | -----          | 28     | 18                    | -----          | 34     |
| Jan. 25...  | 5.56 p.m. | 70                        | 18             | -----  | 34                    | -----          | 18     | 25                    | -----          | 27     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 5.56 p.m. | 103                       | 51             | -----  | 30                    | -----          | 22     | 21                    | -----          | 31     |
| Jan. 28...  | 5.56 p.m. | 65                        | 13             | -----  | 20                    | -----          | 32     | 13                    | -----          | 39     |
| Jan. 29...  | 5.56 p.m. | 83                        | 31             | -----  | 29                    | -----          | 23     | 21                    | -----          | 31     |
| Jan. 30...  | 5.56 p.m. | 71                        | 19             | -----  | 24                    | -----          | 28     | 17                    | -----          | 35     |
| Jan. 31...  | 5.56 p.m. | 64                        | 12             | -----  | 32                    | -----          | 20     | 25                    | -----          | 27     |
| *Jan. 20... | 5.17 p.m. | 64                        | 12             | -----  | 56                    | 4              | -----  | 25                    | -----          | 27     |
| Jan. 21...  | 5.17 p.m. | 51                        | -----          | 1      | 46                    | -----          | 6      | 26                    | -----          | 20     |
| Jan. 22...  | 5.17 p.m. | 42                        | -----          | 10     | 46                    | -----          | 6      | 25                    | -----          | 27     |
| Jan. 23...  | 5.17 p.m. |                           |                |        |                       |                |        |                       |                |        |
| Jan. 24...  | 5.17 p.m. | 52                        | -----          |        | 50                    | -----          | 2      | 24                    | -----          | 28     |
| Jan. 25...  | 5.17 p.m. | 32                        | -----          | 20     | 33                    | -----          | 19     | 23                    | -----          | 29     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 5.17 p.m. | 38                        | -----          | 14     | 36                    | -----          | 16     | 27                    | -----          | 25     |
| Jan. 28...  | 5.17 p.m. | 49                        | -----          | 3      | 49                    | -----          | 3      | 32                    | -----          | 20     |
| Jan. 29...  | 5.17 p.m. | 53                        | 1              | -----  | 46                    | -----          | 6      | 29                    | -----          | 23     |
| Jan. 30...  | 5.17 p.m. | 51                        | -----          | 1      | 42                    | -----          | 10     | 20                    | -----          | 32     |
| Jan. 31...  | 5.17 p.m. | 60                        | 8              | -----  | 53                    | 1              | -----  | 29                    | -----          | 23     |
| Jan. 20...  | 5.16 p.m. | 74                        | 22             | -----  | 21                    | -----          | 31     | 17                    | -----          | 35     |
| Jan. 21...  | 5.16 p.m. | 72                        | 20             | -----  | 37                    | -----          | 16     | 26                    | -----          | 26     |
| Jan. 22...  | 5.16 p.m. | 102                       | 50             | -----  | 55                    | 3              | -----  | 33                    | -----          | 19     |
| Jan. 23...  | 5.16 p.m. | 95                        | 43             | -----  | 31                    | -----          | 21     | 38                    | -----          | 14     |
| Jan. 24...  | 5.16 p.m. | 62                        | 10             | -----  | 27                    | -----          | 20     | 15                    | -----          | 37     |
| Jan. 25...  | 5.16 p.m. | 71                        | 19             | -----  | 36                    | -----          | 16     | 22                    | -----          | 30     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 5.16 p.m. | 90                        | 38             | -----  | 35                    | -----          | 17     | 22                    | -----          | 30     |
| Jan. 28...  | 5.16 p.m. | 81                        | 29             | -----  | 47                    | -----          | 5      | 35                    | -----          | 17     |
| Jan. 29...  | 5.16 p.m. | 88                        | 36             | -----  | 31                    | -----          | 21     | 22                    | -----          | 30     |
| Jan. 30...  | 5.16 p.m. | 71                        | 19             | -----  | 28                    | -----          | 24     | 21                    | -----          | 31     |
| Jan. 31...  | 5.16 p.m. | 66                        | 14             | -----  | 42                    | -----          | 10     | 34                    | -----          | 18     |
| *Jan. 20... | 5.37 p.m. | 45                        | -----          | 7      | 37                    | -----          | 15     | 21                    | -----          | 31     |
| Jan. 21...  | 5.37 p.m. | 46                        | -----          | 6      | 46                    | -----          | 6      | 20                    | -----          | 32     |
| Jan. 22...  | 5.37 p.m. | 46                        | -----          | 6      | 34                    | -----          | 18     | 21                    | -----          | 31     |
| Jan. 23...  | 5.37 p.m. | 64                        | 12             | -----  | 29                    | -----          | 23     | 27                    | -----          | 25     |
| Jan. 24...  | 5.37 p.m. | 62                        | 10             | -----  | 58                    | 6              | -----  | 22                    | -----          | 30     |
| Jan. 25...  | 5.37 p.m. | 48                        | -----          | 4      | 45                    | -----          | 7      | 28                    | -----          | 24     |
| Jan. 26...  | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27...  | 5.37 p.m. | 44                        | -----          | 8      | 36                    | -----          | 16     | 27                    | -----          | 25     |
| Jan. 28...  | 5.37 p.m. | 40                        | -----          | 12     | 22                    | -----          | 30     | 12                    | -----          | 40     |
| Jan. 29...  | 5.37 p.m. | 57                        | 5              | -----  | 50                    | -----          | 2      | 42                    | -----          | 10     |
| Jan. 30...  | 5.37 p.m. | 39                        | -----          | 13     | 40                    | -----          | 2      | 30                    | -----          | 22     |
| Jan. 31...  | 5.37 p.m. | 46                        | -----          | 6      | 37                    | -----          | 15     | 24                    | -----          | 28     |

\*Extra, Twelfth and Broadway.

## OVERLOADING OF CARS—Continued.

| Date.    | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|----------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|          |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20. | 6.18 p.m. | 69                        | 17             | -----  | 30                    | -----          | 22     | 23                    | -----          | 29     |
| Jan. 21. | 6.18 p.m. | 60                        | 8              | -----  | 9                     | -----          | 43     | 13                    | -----          | 39     |
| Jan. 22. | 6.18 p.m. | 56                        | 4              | -----  | 6                     | -----          | 46     | 9                     | -----          | 43     |
| Jan. 23. | 6.18 p.m. | 50                        | -----          | 2      | 11                    | -----          | 41     | 7                     | -----          | 45     |
| Jan. 24. | 6.18 p.m. | 73                        | 21             | -----  | 24                    | -----          | 28     | 9                     | -----          | 43     |
| Jan. 25. | 6.18 p.m. | 44                        | -----          | 8      | 11                    | -----          | 41     | 3                     | -----          | 49     |
| Jan. 26. | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27. | 6.18 p.m. | 53                        | 1              | -----  | 28                    | -----          | 24     | 11                    | -----          | 41     |
| Jan. 28. | 6.18 p.m. | 53                        | 1              | -----  | 27                    | -----          | 25     | 8                     | -----          | 44     |
| Jan. 29. | 6.18 p.m. | 54                        | 2              | -----  | 38                    | -----          | 14     | 33                    | -----          | 19     |
| Jan. 30. | 6.18 p.m. | 31                        | -----          | 21     | 12                    | -----          | 40     | 6                     | -----          | 46     |
| Jan. 31. | 6.18 p.m. | 42                        | -----          | 10     | 24                    | -----          | 28     | 18                    | -----          | 34     |
|          |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20. | 6.38 p.m. | 34                        | -----          | 18     | 15                    | -----          | 37     | 23                    | -----          | 29     |
| Jan. 21. | 6.38 p.m. | 36                        | -----          | 16     | 11                    | -----          | 41     | 9                     | -----          | 43     |
| Jan. 22. | 6.38 p.m. | 19                        | -----          | 33     | 10                    | -----          | 42     | 11                    | -----          | 41     |
| Jan. 23. | 6.38 p.m. | 29                        | -----          | 23     | 16                    | -----          | 36     | 14                    | -----          | 38     |
| Jan. 24. | 6.38 p.m. | 25                        | -----          | 27     | 10                    | -----          | 42     | 13                    | -----          | 39     |
| Jan. 25. | 6.38 p.m. | 59                        | 7              | -----  | 6                     | -----          | 46     | 27                    | -----          | 25     |
| Jan. 26. | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27. | 6.38 p.m. | 24                        | -----          | 28     | 11                    | -----          | 41     | 8                     | -----          | 44     |
| Jan. 28. | 6.38 p.m. | 52                        | -----          | -----  | 12                    | -----          | 40     | 10                    | -----          | 42     |
| Jan. 29. | 6.38 p.m. | 34                        | -----          | 18     | 15                    | -----          | 37     | 18                    | -----          | 34     |
| Jan. 30. | 6.38 p.m. | 35                        | -----          | 17     | 19                    | -----          | 33     | 14                    | -----          | 38     |
| Jan. 31. | 6.38 p.m. | 48                        | -----          | 4      | 17                    | -----          | 35     | 9                     | -----          | 43     |
|          |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20. | 6.58 p.m. | 41                        | -----          | 11     | 30                    | -----          | 22     | 18                    | -----          | 34     |
| Jan. 21. | 6.58 p.m. | 12                        | -----          | 40     | 8                     | -----          | 44     | 5                     | -----          | 47     |
| Jan. 22. | 6.58 p.m. | 41                        | -----          | 11     | 23                    | -----          | 29     | 21                    | -----          | 31     |
| Jan. 23. | 6.58 p.m. | 24                        | -----          | 28     | 16                    | -----          | 36     | 11                    | -----          | 41     |
| Jan. 24. | 6.58 p.m. | 26                        | -----          | 26     | 16                    | -----          | 36     | 11                    | -----          | 41     |
| Jan. 25. | 6.58 p.m. | 71                        | 19             | -----  | 20                    | -----          | 32     | 21                    | -----          | 31     |
| Jan. 26. | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27. | 6.58 p.m. | 38                        | -----          | 14     | 8                     | -----          | 44     | 5                     | -----          | 47     |
| Jan. 28. | 6.58 p.m. | 29                        | -----          | 23     | 12                    | -----          | 40     | 16                    | -----          | 36     |
| Jan. 29. | 6.58 p.m. | 30                        | -----          | 22     | 11                    | -----          | 41     | 12                    | -----          | 40     |
| Jan. 30. | 6.58 p.m. | 30                        | -----          | 22     | 17                    | -----          | 35     | 9                     | -----          | 43     |
| Jan. 31. | 6.58 p.m. | 45                        | -----          | 7      | 21                    | -----          | 31     | 10                    | -----          | 42     |
|          |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20. | 7.18 p.m. | 36                        | -----          | 16     | 32                    | -----          | 20     | 27                    | -----          | 25     |
| Jan. 21. | 7.18 p.m. | 36                        | -----          | 16     | 9                     | -----          | 43     | 4                     | -----          | 48     |
| Jan. 22. | 7.18 p.m. | 42                        | -----          | 10     | 15                    | -----          | 37     | 6                     | -----          | 46     |
| Jan. 23. | 7.18 p.m. | 75                        | 23             | -----  | 58                    | 6              | -----  | 49                    | -----          | 3      |
| Jan. 24. | 7.18 p.m. | 51                        | -----          | 1      | 18                    | -----          | 34     | 20                    | -----          | 32     |
| Jan. 25. | 7.18 p.m. | 32                        | -----          | 20     | 16                    | -----          | 36     | 10                    | -----          | 42     |
| Jan. 26. | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27. | 7.18 p.m. | 34                        | -----          | 18     | 5                     | -----          | 47     | 5                     | -----          | 47     |
| Jan. 28. | 7.18 p.m. | 46                        | 1              | 6      | 10                    | -----          | 42     | 10                    | -----          | 42     |
| Jan. 29. | 7.18 p.m. | 37                        | -----          | 15     | 3                     | -----          | 49     | 7                     | -----          | 45     |
| Jan. 30. | 7.18 p.m. | 22                        | -----          | 30     | 12                    | -----          | 40     | 12                    | -----          | 40     |
| Jan. 31. | 7.18 p.m. | 25                        | -----          | 27     | 10                    | -----          | 42     | 4                     | -----          | 48     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 7.38 p.m. | 22                        | -----          | 30     | 4                     | -----          | 48     | 6                     | -----          | 46     |
| Jan. 21... | 7.38 p.m. | 37                        | -----          | 15     | 7                     | -----          | 35     | 9                     | -----          | 43     |
| Jan. 22... | 7.38 p.m. | 28                        | -----          | 24     | 20                    | -----          | 32     | 8                     | -----          | 44     |
| Jan. 23... | 7.38 p.m. | 27                        | -----          | 25     | 10                    | -----          | 42     | 4                     | -----          | 48     |
| Jan. 24... | 7.38 p.m. | 26                        | -----          | 26     | 12                    | -----          | 40     | 9                     | -----          | 43     |
| Jan. 25... | 7.38 p.m. | 78                        | 26             | -----  | 37                    | -----          | 15     | 20                    | -----          | 32     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.38 p.m. | 21                        | -----          | 31     | 19                    | -----          | 33     | 3                     | -----          | 49     |
| Jan. 28... | 7.38 p.m. | 25                        | -----          | 27     | 7                     | -----          | 35     | 2                     | -----          | 40     |
| Jan. 29... | 7.38 p.m. | 26                        | -----          | 26     | 4                     | -----          | 48     | 13                    | -----          | 39     |
| Jan. 30... | 7.38 p.m. | 32                        | -----          | 20     | 6                     | -----          | 46     | 7                     | -----          | 45     |
| Jan. 31... | 7.38 p.m. | 45                        | -----          | 7      | 14                    | -----          | 38     | 8                     | -----          | 44     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 7.58 p.m. | 21                        | -----          | 31     | 6                     | -----          | 46     | 3                     | -----          | 49     |
| Jan. 21... | 7.58 p.m. | 20                        | -----          | 32     | 6                     | -----          | 46     | 12                    | -----          | 40     |
| Jan. 22... | 7.58 p.m. | 25                        | -----          | 27     | 9                     | -----          | 43     | 6                     | -----          | 46     |
| Jan. 23... | 7.58 p.m. | 27                        | -----          | 25     | 5                     | -----          | 47     | 8                     | -----          | 44     |
| Jan. 24... | 7.58 p.m. | 17                        | -----          | 35     | 18                    | -----          | 34     | 20                    | -----          | 32     |
| Jan. 25... | 7.58 p.m. | 34                        | -----          | 18     | 23                    | -----          | 29     | 19                    | -----          | 33     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.58 p.m. | 5                         | -----          | 47     | 5                     | -----          | 47     | 7                     | -----          | 45     |
| Jan. 28... | 7.58 p.m. | 29                        | -----          | 23     | 9                     | -----          | 43     | 14                    | -----          | 38     |
| Jan. 29... | 7.58 p.m. | 45                        | -----          | 7      | 14                    | -----          | 38     | 23                    | -----          | 29     |
| Jan. 30... | 7.58 p.m. | 34                        | -----          | 18     | 8                     | -----          | 44     | 9                     | -----          | 43     |
| Jan. 31... | 7.58 p.m. | 25                        | -----          | 27     | 9                     | -----          | 43     | 7                     | -----          | 45     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 8.18 p.m. | 17                        | -----          | 35     | 2                     | -----          | 50     | 2                     | -----          | 50     |
| Jan. 21... | 8.18 p.m. | 27                        | -----          | 25     | 7                     | -----          | 45     | 7                     | -----          | 45     |
| Jan. 22... | 8.18 p.m. | 22                        | -----          | 30     | 12                    | -----          | 40     | 9                     | -----          | 43     |
| Jan. 23... | 8.18 p.m. | 32                        | -----          | 20     | 4                     | -----          | 48     | 6                     | -----          | 46     |
| Jan. 24... | 8.18 p.m. | 21                        | -----          | 31     | 12                    | -----          | 40     | 10                    | -----          | 42     |
| Jan. 25... | 8.18 p.m. | 50                        | -----          | 2      | 13                    | -----          | 39     | 9                     | -----          | 43     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.18 p.m. | 30                        | -----          | 22     | 2                     | -----          | 50     | 5                     | -----          | 47     |
| Jan. 28... | 8.18 p.m. | 12                        | -----          | 40     | 1                     | -----          | 51     | 2                     | -----          | 50     |
| Jan. 29... | 8.18 p.m. | 27                        | -----          | 25     | 16                    | -----          | 36     | 5                     | -----          | 47     |
| Jan. 30... | 8.18 p.m. | 21                        | -----          | 31     | 6                     | -----          | 46     | 4                     | -----          | 48     |
| Jan. 31... | 8.18 p.m. | 16                        | -----          | 36     | 15                    | -----          | 37     | 9                     | -----          | 43     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 8.38 p.m. | 28                        | -----          | 24     | 13                    | -----          | 39     | 10                    | -----          | 42     |
| Jan. 21... | 8.38 p.m. | 20                        | -----          | 32     | 6                     | -----          | 46     | 7                     | -----          | 45     |
| Jan. 22... | 8.38 p.m. | 32                        | -----          | 20     | 5                     | -----          | 47     | 8                     | -----          | 44     |
| Jan. 23... | 8.38 p.m. | 24                        | -----          | 28     | 8                     | -----          | 44     | 8                     | -----          | 44     |
| Jan. 24... | 8.38 p.m. | 20                        | -----          | 32     | 14                    | -----          | 38     | 10                    | -----          | 42     |
| Jan. 25... | 8.38 p.m. | 30                        | -----          | 22     | 18                    | -----          | 34     | 12                    | -----          | 40     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.38 p.m. | 28                        | -----          | 24     | 3                     | -----          | 49     | 4                     | -----          | 48     |
| Jan. 28... | 8.38 p.m. | 40                        | -----          | 12     | 14                    | -----          | 38     | 8                     | -----          | 44     |
| Jan. 29... | 8.38 p.m. | 24                        | -----          | 28     | 3                     | -----          | 49     | 2                     | -----          | 50     |
| Jan. 30... | 8.38 p.m. | 52                        | -----          |        | 13                    | -----          | 39     | 10                    | -----          | 42     |
| Jan. 31... | 8.38 p.m. | 27                        | -----          | 25     | 8                     | -----          | 44     | 4                     | -----          | 48     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 8.58 p.m. | 24                        |                | 28     | 7                     |                | 45     | 7                     |                | 45     |
| Jan. 21... | 8.58 p.m. | 43                        |                | 9      | 10                    |                | 42     | 7                     |                | 45     |
| Jan. 22... | 8.58 p.m. | 43                        |                | 9      | 12                    |                | 40     | 9                     |                | 43     |
| Jan. 23... | 8.58 p.m. | 33                        |                | 19     | 6                     |                | 46     | 6                     |                | 46     |
| Jan. 24... | 8.58 p.m. | 29                        |                | 23     | 12                    |                | 40     | 6                     |                | 46     |
| Jan. 25... | 8.58 p.m. | 72                        | 20             |        | 17                    |                | 35     | 12                    |                | 40     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.58 p.m. | 45                        |                | 7      | 7                     |                | 45     | 4                     |                | 48     |
| Jan. 28... | 8.58 p.m. | 51                        |                | 1      | 8                     |                | 44     | 9                     |                | 43     |
| Jan. 29... | 8.58 p.m. | 84                        | 32             |        | 6                     |                | 46     | 10                    |                | 42     |
| Jan. 30... | 8.58 p.m. | 31                        |                | 21     | 11                    |                | 41     | 10                    |                | 42     |
| Jan. 31... | 8.58 p.m. | 51                        |                | 1      | 11                    |                | 41     | 11                    |                | 41     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 9.18 p.m. | 40                        |                | 12     | 3                     |                | 49     | 6                     |                | 46     |
| Jan. 21... | 9.18 p.m. | 45                        |                | 7      | 7                     |                | 45     | 4                     |                | 48     |
| Jan. 22... | 9.18 p.m. | 42                        |                | 10     | 12                    |                | 40     | 5                     |                | 47     |
| Jan. 23... | 9.18 p.m. | 49                        |                | 3      | 16                    |                | 36     | 9                     |                | 43     |
| Jan. 24... | 9.18 p.m. | 40                        |                | 12     | 10                    |                | 42     | 8                     |                | 44     |
| Jan. 25... | 9.18 p.m. | 32                        |                | 20     | 18                    |                | 34     | 13                    |                | 39     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.18 p.m. | 60                        | 8              |        | 18                    |                | 34     | 13                    |                | 39     |
| Jan. 28... | 9.18 p.m. | 49                        |                | 3      | 14                    |                | 38     | 14                    |                | 38     |
| Jan. 29... | 9.18 p.m. | 43                        |                | 9      | 8                     |                | 44     | 6                     |                | 46     |
| Jan. 30... | 9.18 p.m. | 35                        |                | 17     | 4                     |                | 48     | 3                     |                | 49     |
| Jan. 31... | 9.18 p.m. | 32                        |                | 20     | 4                     |                | 48     | 4                     |                | 48     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 9.38 p.m. | 36                        |                | 16     | 2                     |                | 50     | 2                     |                | 50     |
| Jan. 21... | 9.38 p.m. | 34                        |                | 38     | 1                     |                | 51     | 0                     |                | 52     |
| Jan. 22... | 9.38 p.m. | 66                        | 14             |        | 12                    |                | 40     | 7                     |                | 45     |
| Jan. 23... | 9.38 p.m. | 37                        |                | 15     | 7                     |                | 45     | 7                     |                | 45     |
| Jan. 24... | 9.38 p.m. | 65                        | 13             |        | 9                     |                | 43     | 5                     |                | 47     |
| Jan. 25... | 9.38 p.m. | 74                        | 22             |        | 17                    |                | 35     | 12                    |                | 40     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.38 p.m. | 44                        |                | 8      | 8                     |                | 44     | 8                     |                | 44     |
| Jan. 28... | 9.38 p.m. | 31                        |                | 21     | 3                     |                | 49     | 4                     |                | 48     |
| Jan. 29... | 9.38 p.m. | 34                        |                | 18     | 9                     |                | 43     | 7                     |                | 45     |
| Jan. 30... | 9.38 p.m. | 41                        |                | 11     | 2                     |                | 50     | 1                     |                | 51     |
| Jan. 31... | 9.38 p.m. | 39                        |                | 13     | 11                    |                | 41     | 5                     |                | 47     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 9.58 p.m. | 31                        |                | 21     | 7                     |                | 45     | 5                     |                | 47     |
| Jan. 21... | 9.58 p.m. | 56                        | 4              |        | 9                     |                | 43     | 5                     |                | 47     |
| Jan. 22... | 9.58 p.m. | 50                        |                | 2      | 7                     |                | 45     | 5                     |                | 47     |
| Jan. 23... | 9.58 p.m. | 41                        |                | 11     | 13                    |                | 39     | 8                     |                | 44     |
| Jan. 24... | 9.58 p.m. | 53                        | 1              |        | 5                     |                | 47     | 0                     |                | 52     |
| Jan. 25... | 9.58 p.m. | 83                        | 31             |        | 30                    |                | 22     | 22                    |                | 30     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.58 p.m. | 47                        |                | 5      | 22                    |                | 30     | 4                     |                | 48     |
| Jan. 28... | 9.58 p.m. | 37                        |                | 15     | 9                     |                | 43     | 3                     |                | 49     |
| Jan. 29... | 9.58 p.m. | 65                        | 13             |        | 12                    |                | 40     | 9                     |                | 43     |
| Jan. 30... | 9.58 p.m. | 31                        |                | 21     | 9                     |                | 43     | 7                     |                | 45     |
| Jan. 31... | 9.58 p.m. | 41                        |                | 11     | 9                     |                | 43     | 7                     |                | 45     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 10.15 p.m. | 46                        | -----          | 6      | 47                    | -----          | 5      | 10                    | -----          | 42     |
| Jan. 21... | 10.15 p.m. | 40                        | -----          | 12     | 6                     | -----          | 46     | 6                     | -----          | 46     |
| Jan. 22... | 10.15 p.m. | 39                        | -----          | 13     | 4                     | -----          | 48     | 4                     | -----          | 48     |
| Jan. 23... | 10.15 p.m. | 39                        | -----          | 13     | 6                     | -----          | 46     | 6                     | -----          | 46     |
| Jan. 24... | 10.15 p.m. | 50                        | -----          | 2      | 6                     | -----          | 46     | 3                     | -----          | 49     |
| Jan. 25... | 10.15 p.m. | 64                        | 12             | -----  | 10                    | -----          | 42     | 10                    | -----          | 42     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.15 p.m. | 31                        | -----          | 21     | 3                     | -----          | 49     | 3                     | -----          | 49     |
| Jan. 28... | 10.15 p.m. | 44                        | -----          | 8      | 5                     | -----          | 47     | 6                     | -----          | 46     |
| Jan. 29... | 10.15 p.m. | 43                        | -----          | 9      | 12                    | -----          | 40     | 5                     | -----          | 47     |
| Jan. 30... | 10.15 p.m. | 34                        | -----          | 18     | 10                    | -----          | 42     | 0                     | -----          | 52     |
| Jan. 31... | 10.15 p.m. | 61                        | 9              | -----  | 2                     | -----          | 50     | 3                     | -----          | 49     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 10.38 p.m. | 39                        | -----          | 13     | 10                    | -----          | 42     | 15                    | -----          | 37     |
| Jan. 21... | 10.38 p.m. | 21                        | -----          | 31     | 4                     | -----          | 48     | 1                     | -----          | 51     |
| Jan. 22... | 10.38 p.m. | 54                        | 2              | -----  | 10                    | -----          | 42     | 3                     | -----          | 49     |
| Jan. 23... | 10.38 p.m. | 47                        | -----          | 5      | 4                     | -----          | 48     | 2                     | -----          | 50     |
| Jan. 24... | 10.38 p.m. | 58                        | 6              | -----  | 19                    | -----          | 33     | 9                     | -----          | 43     |
| Jan. 25... | 10.38 p.m. | 71                        | 19             | -----  | 12                    | -----          | 40     | 7                     | -----          | 45     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.38 p.m. | 37                        | -----          | 15     | 11                    | -----          | 41     | 6                     | -----          | 46     |
| Jan. 28... | 10.38 p.m. | 55                        | 3              | -----  | 11                    | -----          | 41     | 4                     | -----          | 48     |
| Jan. 29... | 10.38 p.m. | 62                        | 10             | -----  | 14                    | -----          | 38     | 7                     | -----          | 45     |
| Jan. 30... | 10.38 p.m. | 62                        | 10             | -----  | 15                    | -----          | 37     | 9                     | -----          | 43     |
| Jan. 31... | 10.38 p.m. | 85                        | 33             | -----  | 17                    | -----          | 35     | 16                    | -----          | 36     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 10.58 p.m. | 76                        | 24             | -----  | 10                    | -----          | 42     | 1                     | -----          | 51     |
| Jan. 21... | 10.58 p.m. | 20                        | -----          | 32     | 0                     | -----          | 52     | 3                     | -----          | 49     |
| Jan. 22... | 10.58 p.m. | 47                        | -----          | 5      | 4                     | -----          | 48     | 1                     | -----          | 51     |
| Jan. 23... | 10.58 p.m. | 37                        | -----          | 15     | 3                     | -----          | 49     | 2                     | -----          | 50     |
| Jan. 24... | 10.58 p.m. | 63                        | 11             | -----  | 3                     | -----          | 49     | 5                     | -----          | 47     |
| Jan. 25... | 10.58 p.m. | 80                        | 28             | -----  | 29                    | -----          | 23     | 21                    | -----          | 31     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.58 p.m. | 81                        | 29             | -----  | 4                     | -----          | 48     | 9                     | -----          | 43     |
| Jan. 28... | 10.58 p.m. | 50                        | -----          | 2      | 4                     | -----          | 48     | 2                     | -----          | 50     |
| Jan. 29... | 10.58 p.m. | 60                        | 8              | -----  | 4                     | -----          | 48     | 4                     | -----          | 48     |
| Jan. 30... | 10.58 p.m. | 62                        | 10             | -----  | 14                    | -----          | 38     | 10                    | -----          | 42     |
| Jan. 31... | 10.58 p.m. | 81                        | 29             | -----  | 14                    | -----          | 38     | 8                     | -----          | 44     |
|            |            |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 11.18 p.m. | 25                        | -----          | 27     | 5                     | -----          | 47     | 0                     | -----          | 52     |
| Jan. 21... | 11.18 p.m. | 78                        | 26             | -----  | 8                     | -----          | 44     | 5                     | -----          | 47     |
| Jan. 22... | 11.18 p.m. | 97                        | 45             | -----  | 10                    | -----          | 42     | 2                     | -----          | 50     |
| Jan. 23... | 11.18 p.m. | 73                        | 21             | -----  | 30                    | -----          | 22     | 24                    | -----          | 28     |
| Jan. 24... | 11.18 p.m. | 49                        | -----          | 3      | 2                     | -----          | 50     | 11                    | -----          | 41     |
| Jan. 25... | 11.18 p.m. | 42                        | -----          | 10     | 10                    | -----          | 42     | 13                    | -----          | 39     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.18 p.m. | 31                        | -----          | 21     | 10                    | -----          | 42     | 5                     | -----          | 47     |
| Jan. 28... | 11.18 p.m. | 32                        | -----          | 20     | 7                     | -----          | 45     | 2                     | -----          | 50     |
| Jan. 29... | 11.18 p.m. | 40                        | -----          | 12     | 7                     | -----          | 45     | 0                     | -----          | 52     |
| Jan. 30... | 11.18 p.m. | 49                        | -----          | 3      | 9                     | -----          | 43     | 6                     | -----          | 46     |
| Jan. 31... | 11.18 p.m. | 47                        | -----          | 5      | 3                     | -----          | 49     | 15                    | -----          | 37     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 11.38 p.m. | 17                        | -----          | 35     | 5                     | -----          | 47     | 3                     | -----          | 49     |
| Jan. 21... | 11.38 p.m. | 26                        | -----          | 26     | 3                     | -----          | 49     | 4                     | -----          | 48     |
| Jan. 22... | 11.38 p.m. | 25                        | -----          | 27     | 2                     | -----          | 50     | 1                     | -----          | 51     |
| Jan. 23... | 11.38 p.m. | 41                        | -----          | 11     | 10                    | -----          | 42     | 4                     | -----          | 48     |
| Jan. 24... | 11.38 p.m. | 30                        | -----          | 22     | 3                     | -----          | 49     | 2                     | -----          | 50     |
| Jan. 25... | 11.38 p.m. | 75                        | 23             | -----  | 18                    | -----          | 34     | 10                    | -----          | 42     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.38 p.m. | 22                        | -----          | 30     | 3                     | -----          | 49     | 2                     | -----          | 50     |
| Jan. 28... | 11.38 p.m. | 36                        | -----          | 16     | 3                     | -----          | 49     | 2                     | -----          | 50     |
| Jan. 29... | 11.38 p.m. | 18                        | -----          | 34     | 1                     | -----          | 51     | 1                     | -----          | 51     |
| Jan. 30... | 11.38 p.m. | 49                        | -----          | 3      | 5                     | -----          | 47     | 3                     | -----          | 49     |
| Jan. 31... | 11.38 p.m. | 49                        | -----          | 3      | 6                     | -----          | 46     | 3                     | -----          | 49     |
| Jan. 20... | 11.58 p.m. | 30                        | -----          | 22     | 7                     | -----          | 45     | 2                     | -----          | 50     |
| Jan. 21... | 11.58 p.m. | 45                        | -----          | 7      | 6                     | -----          | 46     | 3                     | -----          | 49     |
| Jan. 22... | 11.58 p.m. | 102                       | 50             | -----  | 40                    | -----          | 12     | 21                    | -----          | 31     |
| Jan. 23... | 11.58 p.m. | 37                        | -----          | 15     | 6                     | -----          | 46     | 3                     | -----          | 49     |
| Jan. 24... | 11.58 p.m. | 39                        | -----          | 13     | 16                    | -----          | 36     | 5                     | -----          | 47     |
| Jan. 25... | 11.58 p.m. | 60                        | 8              | -----  | 12                    | -----          | 40     | 11                    | -----          | 41     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.58 p.m. | 13                        | -----          | 39     | 3                     | -----          | 49     |                       | -----          | 52     |
| Jan. 28... | 11.58 p.m. | 41                        | -----          | 11     | 9                     | -----          | 43     | 2                     | -----          | 50     |
| Jan. 29... | 11.58 p.m. | 24                        | -----          | 28     | 6                     | -----          | 46     | 6                     | -----          | 46     |
| Jan. 30... | 11.58 p.m. | 39                        | -----          | 13     | 14                    | -----          | 38     | 9                     | -----          | 43     |
| Jan. 31... | 11.58 p.m. | 39                        | -----          | 13     | 7                     | -----          | 45     | 1                     | -----          | 51     |
| Jan. 20... | 12.18 a.m. | 16                        | -----          | 36     | 1                     | -----          | 51     |                       | -----          | 52     |
| Jan. 21... | 12.18 a.m. | 21                        | -----          | 31     | 4                     | -----          | 48     | 8                     | -----          | 49     |
| Jan. 22... | 12.18 a.m. | 27                        | -----          | 25     | 7                     | -----          | 45     | 8                     | -----          | 44     |
| Jan. 23... | 12.18 a.m. | 18                        | -----          | 39     | 2                     | -----          | 50     |                       | -----          | 52     |
| Jan. 24... | 12.18 a.m. | 30                        | -----          | 22     | 3                     | -----          | 49     | 4                     | -----          | 48     |
| Jan. 25... | 12.18 a.m. | 65                        | 13             | -----  | 15                    | -----          | 37     |                       | -----          | 53     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 12.18 a.m. | 26                        | -----          | 26     | 4                     | -----          | 48     | 4                     | -----          | 48     |
| Jan. 28... | 12.18 a.m. | 52                        | -----          |        | 9                     | -----          | 43     | 9                     | -----          | 43     |
| Jan. 29... | 12.18 a.m. | 42                        | -----          | 10     | 5                     | -----          | 47     | 4                     | -----          | 48     |
| Jan. 30... | 12.18 a.m. | 20                        | -----          | 32     | 5                     | -----          | 47     | 6                     | -----          | 46     |
| Jan. 31... | 12.18 a.m. | 52                        | -----          |        | 5                     | -----          | 47     | 5                     | -----          | 47     |

## West Bound.

|            |           |    |       |    |    |       |    |       |       |       |
|------------|-----------|----|-------|----|----|-------|----|-------|-------|-------|
| Jan. 20... | 5.30 a.m. | 16 | ----- | 36 | 18 | ----- | 34 | ----- | ----- | ----- |
| Jan. 21... | 5.30 a.m. | 15 | ----- | 37 | 14 | ----- | 38 | ----- | ----- | ----- |
| Jan. 22... | 5.30 a.m. | 14 | ----- | 38 | 15 | ----- | 37 | ----- | ----- | ----- |
| Jan. 23... | 5.30 a.m. | 14 | ----- | 38 | 17 | ----- | 35 | 38    | ----- | 14    |
| Jan. 24... | 5.30 a.m. | 12 | ----- | 40 | 13 | ----- | 39 | 19    | ----- | 23    |
| Jan. 25... | 5.30 a.m. | 13 | ----- | 39 | 14 | ----- | 38 | 15    | ----- | 37    |
| Jan. 26... | Sunday    |    |       |    |    |       |    |       |       |       |
| Jan. 27... | 5.30 a.m. | 14 | ----- | 38 | 17 | ----- | 35 | 52    | ----- | ----- |
| Jan. 28... | 5.30 a.m. | 11 | ----- | 41 | 14 | ----- | 38 | 59    | 7     | ----- |
| Jan. 29... | 5.30 a.m. | 13 | ----- | 39 | 15 | ----- | 37 | 49    | ----- | 3     |
| Jan. 30... | 5.30 a.m. | 6  | ----- | 46 | 8  | ----- | 44 | 31    | ----- | 21    |
| Jan. 31... | 5.30 a.m. | 12 | ----- | 40 | 14 | ----- | 38 | 30    | ----- | 42    |

## OVERLOADING OF CARS—Continued.

| Date.       | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|-------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|             |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20...  | 5.49 a.m. | 5                         | -----          | 47     | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 21...  | 5.49 a.m. | 3                         | -----          | 49     | 4                     | -----          | 48     | -----                 | -----          | -----  |
| Jan. 22...  | 5.49 a.m. | 5                         | -----          | 47     | 9                     | -----          | 43     | 53                    | 1              | -----  |
| Jan. 23...  | 5.49 a.m. | 6                         | -----          | 46     | 7                     | -----          | 45     | 48                    | -----          | 4      |
| Jan. 24...  | 5.49 a.m. | 5                         | -----          | 47     | 7                     | -----          | 45     | 42                    | -----          | 10     |
| Jan. 25...  | 5.49 a.m. | 3                         | -----          | 49     | 6                     | -----          | 48     | 18                    | -----          | 34     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27...  | 5.49 a.m. | 11                        | -----          | 41     | 15                    | -----          | 37     | 66                    | 14             | -----  |
| Jan. 28...  | 5.49 a.m. | 6                         | -----          | 46     | 9                     | -----          | 43     | 53                    | 1              | -----  |
| Jan. 29...  | 5.49 a.m. | 7                         | -----          | 45     | 11                    | -----          | 41     | 38                    | -----          | 14     |
| Jan. 30...  | 5.49 a.m. | 10                        | -----          | 42     | 11                    | -----          | 41     | 18                    | -----          | 34     |
| Jan. 31...  | 5.49 a.m. | 4                         | -----          | 48     | 6                     | -----          | 46     | 48                    | -----          | 4      |
| <hr/>       |           |                           |                |        |                       |                |        |                       |                |        |
| *Jan. 20... | 6.09 a.m. | 16                        | -----          | 36     | 29                    | -----          | 23     | -----                 | -----          | -----  |
| Jan. 21...  | 6.09 a.m. | 19                        | -----          | 33     | 27                    | -----          | 25     | -----                 | -----          | -----  |
| Jan. 22...  | 6.09 a.m. | 24                        | -----          | 28     | 32                    | -----          | 20     | 23                    | -----          | 29     |
| Jan. 23...  | 6.09 a.m. | 21                        | -----          | 31     | 26                    | -----          | 26     | 56                    | 4              | -----  |
| Jan. 24...  | 6.09 a.m. | 18                        | -----          | 34     | 26                    | -----          | 26     | 17                    | -----          | 35     |
| Jan. 25...  | 6.09 a.m. | 22                        | -----          | 30     | 28                    | -----          | 24     | 24                    | -----          | 28     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27...  | 6.09 a.m. | 24                        | -----          | 28     | 32                    | -----          | 20     | 22                    | -----          | 30     |
| Jan. 28...  | 6.09 a.m. | 22                        | -----          | 30     | 28                    | -----          | 24     | 33                    | -----          | 19     |
| Jan. 29...  | 6.09 a.m. | 24                        | -----          | 28     | 25                    | -----          | 27     | 26                    | -----          | 26     |
| Jan. 30...  | 6.09 a.m. | 23                        | -----          | 29     | 25                    | -----          | 27     | 29                    | -----          | 23     |
| Jan. 31...  | 6.09 a.m. | 22                        | -----          | 30     | 21                    | -----          | 31     | 27                    | -----          | 25     |
| <hr/>       |           |                           |                |        |                       |                |        |                       |                |        |
| *Jan. 20... | 6.29 a.m. | 17                        | -----          | 35     | 25                    | -----          | 27     | -----                 | -----          | -----  |
| Jan. 21...  | 6.29 a.m. | 16                        | -----          | 36     | 26                    | -----          | 26     | -----                 | -----          | -----  |
| Jan. 22...  | 6.29 a.m. | 17                        | -----          | 35     | 22                    | -----          | 30     | 30                    | -----          | 22     |
| Jan. 23...  | 6.29 a.m. | 16                        | -----          | 36     | 18                    | -----          | 34     | 36                    | -----          | 16     |
| Jan. 24...  | 6.29 a.m. | 13                        | -----          | 39     | 21                    | -----          | 31     | 27                    | -----          | 25     |
| Jan. 25...  | 6.29 a.m. | 13                        | -----          | 39     | 18                    | -----          | 34     | 28                    | -----          | 24     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 28...  | 6.29 a.m. | 21                        | -----          | 31     | 29                    | -----          | 23     | 26                    | -----          | 26     |
| Jan. 29...  | 6.29 a.m. | 12                        | -----          | 40     | 27                    | -----          | 25     | 25                    | -----          | 27     |
| Jan. 30...  | 6.29 a.m. | 14                        | -----          | 38     | 26                    | -----          | 26     | 28                    | -----          | 24     |
| Jan. 31...  | 6.29 a.m. | 13                        | -----          | 39     | 15                    | -----          | 37     | 25                    | -----          | 27     |
| <hr/>       |           |                           |                |        |                       |                |        |                       |                |        |
| *Jan. 20... | 6.49 a.m. | 45                        | -----          | 9      | 34                    | 18             | -----  | -----                 | -----          | -----  |
| Jan. 21...  | 6.49 a.m. | 32                        | -----          | 20     | 35                    | -----          | 17     | -----                 | -----          | -----  |
| Jan. 22...  | 6.49 a.m. | 29                        | -----          | 23     | 42                    | -----          | 10     | 39                    | -----          | 13     |
| Jan. 23...  | 6.49 a.m. | 26                        | -----          | 26     | 40                    | -----          | 12     | 36                    | -----          | 16     |
| Jan. 24...  | 6.49 a.m. | 28                        | -----          | 24     | 45                    | -----          | 7      | 36                    | -----          | 16     |
| Jan. 25...  | 6.49 a.m. | 32                        | -----          | 20     | 49                    | -----          | 3      | 38                    | -----          | 14     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27...  | 6.49 a.m. | 42                        | -----          | 10     | 60                    | 8              | -----  | 54                    | 2              | -----  |
| Jan. 28...  | 6.49 a.m. | 48                        | -----          | 4      | 80                    | 28             | -----  | 44                    | -----          | 8      |
| Jan. 29...  | 6.49 a.m. | 42                        | -----          | 10     | 53                    | 1              | -----  | 44                    | -----          | 8      |
| Jan. 30...  | 6.49 a.m. | 43                        | -----          | 9      | 72                    | 20             | -----  | 50                    | -----          | 2      |
| Jan. 31...  | 6.49 a.m. | 46                        | -----          | 6      | 64                    | 12             | -----  | 44                    | -----          | 8      |

\*Extra. Twelfth and Broadway.

## OVERLOADING OF CARS—Continued.

| Date.       | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|-------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|             |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| *Jan. 20... | 7.09 a.m. | 47                        | -----          | 5      | 56                    | 4              | -----  | -----                 | -----          | -----  |
| Jan. 21...  | 7.09 a.m. | 35                        | -----          | 17     | 51                    | -----          | 1      | -----                 | -----          | -----  |
| Jan. 22...  | 7.09 a.m. | 35                        | -----          | 17     | 60                    | 8              | -----  | 51                    | -----          | 1      |
| Jan. 23...  | 7.09 a.m. | 43                        | -----          | 9      | 43                    | -----          | 9      | 54                    | 2              | -----  |
| Jan. 24...  | 7.09 a.m. | 41                        | -----          | 11     | 61                    | 9              | -----  | 38                    | -----          | 14     |
| Jan. 25...  | 7.09 a.m. | 38                        | -----          | 14     | 47                    | -----          | 5      | 28                    | -----          | 24     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27...  | 7.09 a.m. | 41                        | -----          | 11     | 59                    | 7              | -----  | 37                    | -----          | 15     |
| Jan. 28...  | 7.09 a.m. | 31                        | -----          | 21     | 47                    | -----          | 5      | 30                    | -----          | 22     |
| Jan. 29...  | 7.09 a.m. | 41                        | -----          | 11     | 60                    | 8              | -----  | 33                    | -----          | 19     |
| Jan. 30...  | 7.09 a.m. | 29                        | -----          | 23     | 44                    | -----          | 8      | 26                    | -----          | 26     |
| Jan. 31...  | 7.09 a.m. | 41                        | -----          | 11     | 55                    | 3              | -----  | 35                    | -----          | 17     |
| *Jan. 20... | 7.54 a.m. | 51                        | -----          | 1      | 71                    | 19             | -----  | -----                 | -----          | -----  |
| Jan. 21...  | 7.54 a.m. | 50                        | -----          | 2      | 71                    | 19             | -----  | -----                 | -----          | -----  |
| Jan. 22...  | 7.54 a.m. | 49                        | -----          | 3      | 75                    | 23             | -----  | 68                    | 16             | -----  |
| Jan. 23...  | 7.54 a.m. | 43                        | -----          | 9      | 68                    | 16             | -----  | 50                    | -----          | 2      |
| Jan. 24...  | 7.54 a.m. | 32                        | -----          | 20     | 66                    | 14             | -----  | 48                    | -----          | 4      |
| Jan. 25...  | 7.54 a.m. | 38                        | -----          | 14     | 38                    | -----          | 14     | 40                    | -----          | 12     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27...  | 7.54 a.m. | 52                        | -----          | -----  | 74                    | 22             | -----  | 77                    | 25             | -----  |
| Jan. 28...  | 7.54 a.m. | 43                        | -----          | 9      | 74                    | 22             | -----  | 60                    | 8              | -----  |
| Jan. 29...  | 7.54 a.m. | 43                        | -----          | 9      | 65                    | 13             | -----  | 51                    | -----          | 1      |
| Jan. 30...  | 7.54 a.m. | 43                        | -----          | 9      | 73                    | 21             | -----  | 50                    | -----          | 2      |
| Jan. 31...  | 7.54 a.m. | 36                        | -----          | 16     | 56                    | 4              | -----  | 53                    | 1              | -----  |
| Jan. 20...  | 7.29 a.m. | 15                        | -----          | 37     | 40                    | -----          | 12     | -----                 | -----          | -----  |
| Jan. 21...  | 7.29 a.m. | 35                        | -----          | 17     | 54                    | 2              | -----  | -----                 | -----          | -----  |
| Jan. 22...  | 7.29 a.m. | 27                        | -----          | 25     | 48                    | -----          | 4      | 29                    | -----          | 23     |
| Jan. 23...  | 7.29 a.m. | 38                        | -----          | 14     | 52                    | -----          | -----  | 36                    | -----          | 16     |
| Jan. 24...  | 7.29 a.m. | 39                        | -----          | 13     | 53                    | 1              | -----  | 34                    | -----          | 18     |
| Jan. 25...  | 7.29 a.m. | 29                        | -----          | 23     | 34                    | -----          | 14     | 20                    | -----          | 32     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27...  | 7.29 a.m. | 37                        | -----          | 15     | 57                    | 5              | -----  | 40                    | -----          | 12     |
| Jan. 28...  | 7.29 a.m. | 35                        | -----          | 17     | 35                    | -----          | 17     | 43                    | -----          | 9      |
| Jan. 29...  | 7.29 a.m. | 31                        | -----          | 21     | 47                    | -----          | 5      | 38                    | -----          | 14     |
| Jan. 30...  | 7.29 a.m. | 35                        | -----          | 17     | 54                    | 2              | -----  | 49                    | -----          | 3      |
| Jan. 31...  | 7.29 a.m. | 33                        | -----          | 19     | 47                    | -----          | 5      | 38                    | -----          | 14     |
| Jan. 20...  | 8.14 a.m. | 26                        | -----          | 26     | 35                    | -----          | 17     | -----                 | -----          | -----  |
| Jan. 21...  | 8.14 a.m. | 11                        | -----          | 41     | 17                    | -----          | 35     | -----                 | -----          | -----  |
| Jan. 22...  | 8.14 a.m. | 18                        | -----          | 34     | 21                    | -----          | 31     | 55                    | 3              | -----  |
| Jan. 23...  | 8.14 a.m. | 11                        | -----          | 41     | 20                    | -----          | 32     | 45                    | -----          | 7      |
| Jan. 24...  | 8.14 a.m. | 10                        | -----          | 42     | 11                    | -----          | 41     | 48                    | -----          | 4      |
| Jan. 25...  | 8.14 a.m. | 11                        | -----          | 41     | 18                    | -----          | 34     | 23                    | -----          | 29     |
| Jan. 26...  | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27...  | 8.14 a.m. | 13                        | -----          | 39     | 17                    | -----          | 35     | 31                    | -----          | 21     |
| Jan. 28...  | 8.14 a.m. | 15                        | -----          | 37     | 22                    | -----          | 30     | 24                    | -----          | 28     |
| Jan. 29...  | 8.14 a.m. | 24                        | -----          | 28     | 31                    | -----          | 21     | 40                    | -----          | 12     |
| Jan. 30...  | 8.14 a.m. | 11                        | -----          | 41     | 18                    | -----          | 34     | 26                    | -----          | 26     |
| Jan. 31...  | 8.14 a.m. | 14                        | -----          | 38     | 22                    | -----          | 30     | 42                    | -----          | 10     |

\*Extra. Twelfth and Broadway.



## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 8.34 a.m. | 23                        | -----          | 29     | 20                    | -----          | 32     | -----                 | -----          | -----  |
| Jan. 21... | 8.34 a.m. | 24                        | -----          | 28     | 27                    | -----          | 25     | -----                 | -----          | -----  |
| Jan. 22... | 8.34 a.m. | 14                        | -----          | 28     | 14                    | -----          | 28     | 27                    | -----          | 25     |
| Jan. 23... | 8.34 a.m. | 13                        | -----          | 39     | 16                    | -----          | 36     | 23                    | -----          | 29     |
| Jan. 24... | 8.34 a.m. | 18                        | -----          | 34     | 16                    | -----          | 36     | 24                    | -----          | 28     |
| Jan. 25... | 8.34 a.m. | 22                        | -----          | 30     | 24                    | -----          | 28     | 37                    | -----          | 15     |
| Jan. 26... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 8.34 a.m. | 20                        | -----          | 32     | 25                    | -----          | 27     | 50                    | -----          | 2      |
| Jan. 28... | 8.34 a.m. | 12                        | -----          | 40     | 10                    | -----          | 42     | 22                    | -----          | 30     |
| Jan. 29... | 8.34 a.m. | 13                        | -----          | 39     | 15                    | -----          | 37     | 32                    | -----          | 20     |
| Jan. 30... | 8.34 a.m. | 4                         | -----          | 48     | 4                     | -----          | 48     | 22                    | -----          | 30     |
| Jan. 31... | 8.34 a.m. | 33                        | -----          | 19     | 27                    | -----          | 25     | 51                    | -----          | 1      |
| <hr/>      |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 8.54 a.m. | 25                        | -----          | 27     | 27                    | -----          | 25     | -----                 | -----          | -----  |
| Jan. 21... | 8.34 a.m. | 25                        | -----          | 27     | 28                    | -----          | 24     | -----                 | -----          | -----  |
| Jan. 22... | 8.54 a.m. | 16                        | -----          | 36     | 18                    | -----          | 34     | 45                    | -----          | 7      |
| Jan. 23... | 8.54 a.m. | 13                        | -----          | 39     | 14                    | -----          | 38     | 22                    | -----          | 30     |
| Jan. 24... | 8.54 a.m. | 18                        | -----          | 34     | 19                    | -----          | 33     | 36                    | -----          | 16     |
| Jan. 25... | 8.54 a.m. | 34                        | -----          | 18     | 44                    | -----          | 8      | 82                    | 30             | -----  |
| Jan. 26... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 8.54 a.m. | 24                        | -----          | 28     | 22                    | -----          | 30     | 60                    | 8              | -----  |
| Jan. 28... | 8.54 a.m. | 30                        | -----          | 22     | 35                    | -----          | 17     | 36                    | -----          | 60     |
| Jan. 29... | 8.54 a.m. | 35                        | -----          | 17     | 21                    | -----          | 31     | 51                    | -----          | 1      |
| Jan. 30... | 8.54 a.m. | 20                        | -----          | 32     | 22                    | -----          | 30     | 50                    | -----          | 2      |
| Jan. 31... | 8.54 a.m. | 19                        | -----          | 33     | 20                    | -----          | 32     | 27                    | -----          | 25     |
| <hr/>      |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 9.14 a.m. | 34                        | -----          | 18     | 44                    | -----          | 8      | -----                 | -----          | -----  |
| Jan. 21... | 9.14 a.m. | 18                        | -----          | 34     | 19                    | -----          | 33     | -----                 | -----          | -----  |
| Jan. 22... | 9.14 a.m. | 13                        | -----          | 39     | 20                    | -----          | 32     | 36                    | -----          | 16     |
| Jan. 23... | 9.14 a.m. | 16                        | -----          | 36     | 22                    | -----          | 30     | 57                    | 5              | -----  |
| Jan. 24... | 9.14 a.m. | 17                        | -----          | 35     | 23                    | -----          | 29     | 45                    | -----          | 7      |
| Jan. 25... | 9.14 a.m. | 17                        | -----          | 35     | 19                    | -----          | 33     | 76                    | 24             | -----  |
| Jan. 26... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 9.14 a.m. | 10                        | -----          | 42     | 14                    | -----          | 38     | 50                    | -----          | 2      |
| Jan. 28... | 9.14 a.m. | 12                        | -----          | 40     | 13                    | -----          | 39     | 23                    | -----          | 29     |
| Jan. 29... | 9.14 a.m. | 12                        | -----          | 40     | 13                    | -----          | 39     | 28                    | -----          | 24     |
| Jan. 30... | 9.14 a.m. | 13                        | -----          | 39     | 15                    | -----          | 37     | 38                    | -----          | 14     |
| Jan. 31... | 9.14 a.m. | 18                        | -----          | 34     | 25                    | -----          | 27     | 22                    | -----          | 30     |
| <hr/>      |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 9.34 a.m. | 40                        | -----          | 12     | 43                    | -----          | 9      | -----                 | -----          | -----  |
| Jan. 21... | 9.34 a.m. | 16                        | -----          | 36     | 18                    | -----          | 34     | -----                 | -----          | -----  |
| Jan. 22... | 9.34 a.m. | 22                        | -----          | 30     | 30                    | -----          | 22     | 50                    | -----          | 2      |
| Jan. 23... | 9.34 a.m. | 24                        | -----          | 28     | 40                    | -----          | 12     | 40                    | -----          | 12     |
| Jan. 24... | 9.34 a.m. | 25                        | -----          | 27     | 26                    | -----          | 26     | 37                    | -----          | 15     |
| Jan. 25... | 9.34 a.m. | 17                        | -----          | 35     | 36                    | -----          | 26     | 66                    | 14             | -----  |
| Jan. 26... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27... | 9.34 a.m. | 16                        | -----          | 36     | 21                    | -----          | 31     | 52                    | -----          | -----  |
| Jan. 28... | 9.34 a.m. | 28                        | -----          | 24     | 26                    | -----          | 26     | 62                    | 10             | -----  |
| Jan. 29... | 9.34 a.m. | 25                        | -----          | 27     | 19                    | -----          | 33     | 53                    | 1              | -----  |
| Jan. 30... | 9.34 a.m. | 26                        | -----          | 26     | 31                    | -----          | 21     | 64                    | 12             | -----  |
| Jan. 31... | 9.34 a.m. | 21                        | -----          | 31     | 21                    | -----          | 31     | 32                    | -----          | 20     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|--------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.         | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 9.54 a.m.  | 21                       | -----          | 31     | 26                    | -----          | 26     | -----                 | -----          | -----  |
| Jan. 21... | 9.54 a.m.  | 24                       | -----          | 28     | 24                    | -----          | 26     | -----                 | -----          | -----  |
| Jan. 22... | 9.54 a.m.  | 23                       | -----          | 29     | 28                    | -----          | 24     | 46                    | -----          | 6      |
| Jan. 23... | 9.54 a.m.  | 11                       | -----          | 41     | 22                    | -----          | 30     | 58                    | 6              | -----  |
| Jan. 24... | 9.54 a.m.  | 19                       | -----          | 33     | 25                    | -----          | 27     | 46                    | -----          | 6      |
| Jan. 25... | 9.54 a.m.  | 20                       | -----          | 32     | 29                    | -----          | 23     | 62                    | 10             | -----  |
| Jan. 26... | Sunday     |                          |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.54 a.m.  | 21                       | -----          | 31     | 22                    | -----          | 30     | 40                    | -----          | 12     |
| Jan. 28... | 9.54 a.m.  | 20                       | -----          | 32     | 22                    | -----          | 30     | 44                    | -----          | 8      |
| Jan. 29... | 9.54 a.m.  | 12                       | -----          | 40     | 17                    | -----          | 35     | 60                    | 8              | -----  |
| Jan. 30... | 9.54 a.m.  | 15                       | -----          | 37     | 20                    | -----          | 32     | 39                    | -----          | 13     |
| Jan. 31... | 9.54 a.m.  | 18                       | -----          | 34     | 25                    | -----          | 27     | 54                    | 2              | -----  |
| Jan. 20... | 10.14 a.m. | 18                       | -----          | 34     | 33                    | -----          | 19     | -----                 | -----          | -----  |
| Jan. 21... | 10.14 a.m. | 25                       | -----          | 27     | 28                    | -----          | 24     | -----                 | -----          | -----  |
| Jan. 22... | 10.14 a.m. | 25                       | -----          | 27     | 31                    | -----          | 21     | 45                    | -----          | 7      |
| Jan. 23... | 10.14 a.m. | 25                       | -----          | 27     | 30                    | -----          | 22     | 12                    | -----          | 40     |
| Jan. 24... | 10.14 a.m. | 20                       | -----          | 32     | 19                    | -----          | 33     | 51                    | -----          | 1      |
| Jan. 25... | 10.14 a.m. | 28                       | -----          | 24     | 35                    | -----          | 17     | 32                    | -----          | 20     |
| Jan. 26... | Sunday     |                          |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.14 a.m. | 22                       | -----          | 30     | 29                    | -----          | 33     | 50                    | -----          | 2      |
| Jan. 28... | 10.14 a.m. | 21                       | -----          | 31     | 22                    | -----          | 30     | 58                    | 6              | -----  |
| Jan. 29... | 10.14 a.m. | 22                       | -----          | 30     | 32                    | -----          | 20     | 71                    | 19             | -----  |
| Jan. 30... | 10.14 a.m. | 18                       | -----          | 34     | 22                    | -----          | 30     | 74                    | 22             | -----  |
| Jan. 31... | 10.14 a.m. | 26                       | -----          | 26     | 28                    | -----          | 24     | 52                    | -----          | -----  |
| Jan. 20... | 10.34 a.m. | 30                       | -----          | 22     | 40                    | -----          | 12     | -----                 | -----          | -----  |
| Jan. 21... | 10.34 a.m. | 17                       | -----          | 35     | 19                    | -----          | 33     | -----                 | -----          | -----  |
| Jan. 22... | 10.34 a.m. | 17                       | -----          | 35     | 21                    | -----          | 31     | 57                    | 5              | -----  |
| Jan. 23... | 10.34 a.m. | 20                       | -----          | 32     | 25                    | -----          | 27     | 31                    | -----          | 21     |
| Jan. 24... | 10.34 a.m. | 20                       | -----          | 32     | 8                     | -----          | 44     | 38                    | -----          | 14     |
| Jan. 25... | 10.34 a.m. | 21                       | -----          | 31     | 25                    | -----          | 27     | 64                    | 12             | -----  |
| Jan. 26... | Sunday     |                          |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.34 a.m. | 22                       | -----          | 30     | 18                    | -----          | 34     | 50                    | -----          | 2      |
| Jan. 28... | 10.34 a.m. | 8                        | -----          | 44     | 14                    | -----          | 38     | 44                    | -----          | 7      |
| Jan. 29... | 10.34 a.m. | 12                       | -----          | 40     | 13                    | -----          | 38     | 32                    | -----          | 20     |
| Jan. 30... | 10.34 a.m. | 11                       | -----          | 41     | 15                    | -----          | 37     | 30                    | -----          | 22     |
| Jan. 31... | 10.34 a.m. | 12                       | -----          | 40     | 14                    | -----          | 38     | 31                    | -----          | 21     |
| Jan. 20... | 10.54 a.m. | 18                       | -----          | 34     | 24                    | -----          | 38     | -----                 | -----          | -----  |
| Jan. 21... | 10.54 a.m. | 18                       | -----          | 34     | 28                    | -----          | 24     | -----                 | -----          | -----  |
| Jan. 22... | 10.54 a.m. | 17                       | -----          | 35     | 20                    | -----          | 32     | 55                    | 3              | -----  |
| Jan. 23... | 10.54 a.m. | 15                       | -----          | 37     | 22                    | -----          | 30     | 51                    | -----          | 1      |
| Jan. 24... | 10.54 a.m. | 12                       | -----          | 40     | 22                    | -----          | 30     | 35                    | -----          | 17     |
| Jan. 25... | 10.54 a.m. | 22                       | -----          | 30     | 22                    | -----          | 30     | 40                    | -----          | 12     |
| Jan. 26... | Sunday     |                          |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.54 a.m. | 23                       | -----          | 29     | 25                    | -----          | 27     | 65                    | 13             | -----  |
| Jan. 28... | 10.54 a.m. | 17                       | -----          | 35     | 25                    | -----          | 27     | 18                    | -----          | 34     |
| Jan. 29... | 10.54 a.m. | 21                       | -----          | 31     | 25                    | -----          | 27     | 49                    | -----          | 3      |
| Jan. 30... | 10.54 a.m. | 25                       | -----          | 7      | 28                    | -----          | 24     | 28                    | -----          | 24     |
| Jan. 31... | 10.54 a.m. | 30                       | -----          | 22     | 28                    | -----          | 24     | 50                    | -----          | 2      |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 11.14 a.m. | 12                        | -----          | 40     | 20                    | -----          | 32     | -----                 | -----          | -----  |
| Jan. 21... | 11.14 a.m. | 11                        | -----          | 41     | 20                    | -----          | 32     | -----                 | -----          | -----  |
| Jan. 22... | 11.14 a.m. | 24                        | -----          | 28     | 27                    | -----          | 25     | 49                    | -----          | 3      |
| Jan. 23... | 11.14 a.m. | 12                        | -----          | 42     | 20                    | -----          | 32     | 39                    | -----          | 13     |
| Jan. 24... | 11.14 a.m. | 14                        | -----          | 38     | 44                    | -----          | 8      | 59                    | 7              | -----  |
| Jan. 25... | 11.14 a.m. | 10                        | -----          | 42     | 12                    | -----          | 40     | 84                    | -----          | 32     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.14 a.m. | 6                         | -----          | 46     | 9                     | -----          | 43     | 40                    | -----          | 12     |
| Jan. 28... | 11.14 a.m. | 14                        | -----          | 38     | 20                    | -----          | 32     | 25                    | -----          | 27     |
| Jan. 29... | 11.14 a.m. | 17                        | -----          | 35     | 37                    | -----          | 25     | 60                    | 8              | -----  |
| Jan. 30... | 11.14 a.m. | 13                        | -----          | 39     | 16                    | -----          | 36     | 39                    | -----          | 33     |
| Jan. 31... | 11.14 a.m. | 14                        | -----          | 38     | 14                    | -----          | 38     | 67                    | 15             | -----  |
| Jan. 20... | 11.34 a.m. | 11                        | -----          | 41     | 14                    | -----          | 38     | -----                 | -----          | -----  |
| Jan. 21... | 11.34 a.m. | 19                        | -----          | 33     | 24                    | -----          | 28     | -----                 | -----          | -----  |
| Jan. 22... | 11.34 a.m. | 10                        | -----          | 42     | 13                    | -----          | 39     | 26                    | -----          | 26     |
| Jan. 23... | 11.34 a.m. | 20                        | -----          | 32     | 20                    | -----          | 32     | 30                    | -----          | 22     |
| Jan. 24... | 11.34 a.m. | 3                         | -----          | 49     | 5                     | -----          | 47     | 31                    | -----          | 21     |
| Jan. 25... | 11.34 a.m. | 21                        | -----          | 31     | 25                    | -----          | 27     | 63                    | 11             | -----  |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.34 a.m. | 17                        | -----          | 35     | 16                    | -----          | 36     | 33                    | -----          | 19     |
| Jan. 28... | 11.34 a.m. | 16                        | -----          | 36     | 18                    | -----          | 34     | 21                    | -----          | 31     |
| Jan. 29... | 11.34 a.m. | 17                        | -----          | 35     | 21                    | -----          | 31     | 23                    | -----          | 29     |
| Jan. 30... | 11.34 a.m. | 14                        | -----          | 38     | 16                    | -----          | 36     | 50                    | -----          | 2      |
| Jan. 31... | 11.34 a.m. | 12                        | -----          | 42     | 12                    | -----          | 42     | 27                    | -----          | 25     |
| Jan. 20... | 11.54 a.m. | 16                        | -----          | 36     | 11                    | -----          | 41     | -----                 | -----          | -----  |
| Jan. 21... | 11.54 a.m. | 13                        | -----          | 39     | 17                    | -----          | 35     | -----                 | -----          | -----  |
| Jan. 22... | 11.54 a.m. | 12                        | -----          | 40     | 17                    | -----          | 35     | 40                    | -----          | 12     |
| Jan. 23... | 11.54 a.m. | 12                        | -----          | 40     | 14                    | -----          | 38     | 41                    | -----          | 11     |
| Jan. 24... | 11.54 a.m. | 30                        | -----          | 22     | 33                    | -----          | 19     | 53                    | 1              | -----  |
| Jan. 25... | 11.54 a.m. | 17                        | -----          | 35     | 14                    | -----          | 38     | 71                    | 19             | -----  |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.54 a.m. | 18                        | -----          | 34     | 19                    | -----          | 33     | 35                    | -----          | 17     |
| Jan. 28... | 11.54 a.m. | 22                        | -----          | 30     | 21                    | -----          | 31     | 48                    | -----          | 4      |
| Jan. 29... | 11.54 a.m. | 17                        | -----          | 35     | 22                    | -----          | 30     | 63                    | 11             | -----  |
| Jan. 30... | 11.54 a.m. | 15                        | -----          | 37     | 18                    | -----          | 34     | 29                    | -----          | 23     |
| Jan. 31... | 11.54 a.m. | 19                        | -----          | 33     | 32                    | -----          | 20     | 32                    | -----          | 20     |
| Jan. 20... | 12.14 p.m. | 18                        | -----          | 34     | 25                    | -----          | 27     | -----                 | -----          | -----  |
| Jan. 21... | 12.14 p.m. | 14                        | -----          | 38     | 16                    | -----          | 36     | -----                 | -----          | -----  |
| Jan. 22... | 12.14 p.m. | 15                        | -----          | 37     | 22                    | -----          | 30     | 37                    | -----          | 15     |
| Jan. 23... | 12.14 p.m. | 14                        | -----          | 38     | 14                    | -----          | 37     | 59                    | 7              | -----  |
| Jan. 24... | 12.14 p.m. | 14                        | -----          | 38     | 21                    | -----          | 31     | 83                    | 31             | -----  |
| Jan. 25... | 12.14 p.m. | 31                        | -----          | 21     | 29                    | -----          | 23     | 56                    | 4              | -----  |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 12.14 p.m. | 19                        | -----          | 33     | 27                    | -----          | 25     | 74                    | 22             | -----  |
| Jan. 28... | 12.14 p.m. | 7                         | -----          | 45     | 13                    | -----          | 39     | 48                    | -----          | 4      |
| Jan. 29... | 12.14 p.m. | 9                         | -----          | 43     | 15                    | -----          | 37     | 45                    | -----          | 7      |
| Jan. 30... | 12.14 p.m. | 18                        | -----          | 34     | 21                    | -----          | 31     | 54                    | 2              | -----  |
| Jan. 31... | 12.14 p.m. | 20                        | -----          | 32     | 39                    | -----          | 13     | 52                    | -----          | -----  |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 12.34 p.m. | 25                        | -----          | 27     | 28                    | -----          | 24     | -----                 | -----          | -----  |
| Jan. 21... | 12.34 p.m. | 2                         | -----          | 50     | 7                     | -----          | 45     | -----                 | -----          | -----  |
| Jan. 22... | 12.34 p.m. | 17                        | -----          | 35     | 19                    | -----          | 33     | 34                    | -----          | 18     |
| Jan. 23... | 12.34 p.m. | 26                        | -----          | 26     | 29                    | -----          | 23     | 44                    | -----          | 8      |
| Jan. 24... | 12.34 p.m. | 21                        | -----          | 31     | 35                    | -----          | 17     | 47                    | -----          | 5      |
| Jan. 25... | 12.34 p.m. | 16                        | -----          | 36     | 29                    | -----          | 23     | 40                    | -----          | 12     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 12.34 p.m. | 12                        | -----          | 40     | 12                    | -----          | 40     | 50                    | -----          | 2      |
| Jan. 28... | 12.34 p.m. | 13                        | -----          | 39     | 42                    | -----          | 10     | 72                    | 20             | -----  |
| Jan. 29... | 12.34 p.m. | 19                        | -----          | 33     | 20                    | -----          | 32     | 42                    | -----          | 10     |
| Jan. 30... | 12.34 p.m. | 28                        | -----          | 24     | 38                    | -----          | 14     | 35                    | -----          | 17     |
| Jan. 31... | 12.34 p.m. | 25                        | -----          | 27     | 27                    | -----          | 25     | 53                    | 1              | -----  |
| Jan. 20... | 12.54 p.m. | 20                        | -----          | 32     | 17                    | -----          | 35     | -----                 | -----          | -----  |
| Jan. 21... | 12.54 p.m. | 26                        | -----          | 26     | 28                    | -----          | 24     | -----                 | -----          | -----  |
| Jan. 22... | 12.54 p.m. | 24                        | -----          | 28     | 26                    | -----          | 26     | 55                    | 3              | -----  |
| Jan. 23... | 12.54 p.m. | 15                        | -----          | 37     | 29                    | -----          | 23     | 40                    | -----          | 12     |
| Jan. 24... | 12.54 p.m. | 15                        | -----          | 37     | 16                    | -----          | 36     | 60                    | 8              | -----  |
| Jan. 25... | 12.54 p.m. | 22                        | -----          | 30     | 32                    | -----          | 20     | 70                    | 18             | -----  |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 12.54 p.m. | 15                        | -----          | 37     | 20                    | -----          | 32     | 55                    | 3              | -----  |
| Jan. 28... | 12.54 p.m. | 22                        | -----          | 30     | 24                    | -----          | 28     | 56                    | 4              | -----  |
| Jan. 29... | 12.54 p.m. | 28                        | -----          | 24     | 28                    | -----          | 24     | 64                    | 12             | -----  |
| Jan. 30... | 12.54 p.m. | 28                        | -----          | 24     | 32                    | -----          | 20     | 87                    | 35             | -----  |
| Jan. 31... | 12.54 p.m. | 23                        | -----          | 29     | 33                    | -----          | 19     | 51                    | -----          | 1      |
| Jan. 20... | 1.14 p.m.  | 15                        | -----          | 37     | 14                    | -----          | 38     | -----                 | -----          | -----  |
| Jan. 21... | 1.14 p.m.  | 21                        | -----          | 31     | 29                    | -----          | 23     | -----                 | -----          | -----  |
| Jan. 22... | 1.14 p.m.  | 23                        | -----          | 29     | 30                    | -----          | 22     | 45                    | -----          | 7      |
| Jan. 23... | 1.14 p.m.  | 13                        | -----          | 39     | 16                    | -----          | 36     | 71                    | 19             | -----  |
| Jan. 24... | 1.14 p.m.  | 27                        | -----          | 25     | 24                    | -----          | 28     | 60                    | 8              | -----  |
| Jan. 25... | 1.14 p.m.  | 29                        | -----          | 23     | 21                    | -----          | 11     | 75                    | 23             | -----  |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 1.14 p.m.  | 26                        | -----          | 26     | 30                    | -----          | 22     | 49                    | -----          | 3      |
| Jan. 28... | 1.14 p.m.  | 29                        | -----          | 23     | 39                    | -----          | 13     | 72                    | 20             | -----  |
| Jan. 29... | 1.14 p.m.  | 22                        | -----          | 30     | 15                    | -----          | 37     | 80                    | 28             | -----  |
| Jan. 30... | 1.14 p.m.  | 16                        | -----          | 36     | 21                    | -----          | 31     | 77                    | 25             | -----  |
| Jan. 31... | 1.14 p.m.  | 20                        | -----          | 32     | 39                    | -----          | 13     | 52                    | -----          | -----  |
| Jan. 20... | 1.34 p.m.  | 20                        | -----          | 32     | 35                    | -----          | 17     | -----                 | -----          | -----  |
| Jan. 21... | 1.34 p.m.  | 18                        | -----          | 34     | 27                    | -----          | 25     | -----                 | -----          | -----  |
| Jan. 22... | 1.34 p.m.  | 18                        | -----          | 34     | 25                    | -----          | 27     | 67                    | 15             | -----  |
| Jan. 23... | 1.34 p.m.  | 25                        | -----          | 27     | 26                    | -----          | 26     | 62                    | 10             | -----  |
| Jan. 24... | 1.34 p.m.  | 12                        | -----          | 40     | 16                    | -----          | 36     | 21                    | 31             | -----  |
| Jan. 25... | 1.34 p.m.  | 25                        | -----          | 27     | 14                    | -----          | 38     | 57                    | 5              | -----  |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 1.34 p.m.  | 16                        | -----          | 36     | 12                    | -----          | 40     | 64                    | 12             | -----  |
| Jan. 28... | 1.34 p.m.  | 12                        | -----          | 40     | 11                    | -----          | 41     | 64                    | 12             | -----  |
| Jan. 29... | 1.34 p.m.  | 23                        | -----          | 29     | 17                    | -----          | 35     | 71                    | 19             | -----  |
| Jan. 30... | 1.34 p.m.  | 12                        | -----          | 40     | 13                    | -----          | 39     | 35                    | -----          | 37     |
| Jan. 31... | 1.34 p.m.  | 12                        | -----          | 40     | 19                    | -----          | 33     | 50                    | -----          | 2      |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 1.54 p.m. | 18                        | -----          | 34     | 13                    | -----          | 39     | -----                 | -----          | -----  |
| Jan. 21... | 1.54 p.m. | 21                        | -----          | 31     | 24                    | -----          | 28     | -----                 | -----          | -----  |
| Jan. 22... | 1.54 p.m. | 12                        | -----          | 40     | 11                    | -----          | 41     | 23                    | -----          | 29     |
| Jan. 23... | 1.54 p.m. | 12                        | -----          | 40     | 19                    | -----          | 33     | 42                    | -----          | 10     |
| Jan. 24... | 1.54 p.m. | 9                         | -----          | 43     | 9                     | -----          | 43     | 42                    | -----          | 10     |
| Jan. 25... | 1.54 p.m. | 17                        | -----          | 35     | 20                    | -----          | 32     | 56                    | 4              | -----  |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 1.54 p.m. | 10                        | -----          | 42     | 10                    | -----          | 42     | 53                    | 1              | -----  |
| Jan. 28... | 1.54 p.m. | 14                        | -----          | 38     | 22                    | -----          | 30     | 40                    | -----          | 12     |
| Jan. 29... | 1.54 p.m. | 14                        | -----          | 38     | 22                    | -----          | 30     | 42                    | -----          | 10     |
| Jan. 30... | 1.54 p.m. | 9                         | -----          | 43     | 14                    | -----          | 38     | 77                    | 25             | -----  |
| Jan. 31... | 1.54 p.m. | 12                        | -----          | 40     | 10                    | -----          | 42     | 49                    | -----          | 3      |
| Jan. 20... | 2.14 p.m. | 16                        | -----          | 36     | 18                    | -----          | 34     | -----                 | -----          | -----  |
| Jan. 21... | 2.14 p.m. | 15                        | -----          | 37     | 19                    | -----          | 32     | -----                 | -----          | -----  |
| Jan. 22... | 2.14 p.m. | 12                        | -----          | 40     | 10                    | -----          | 42     | 18                    | -----          | 34     |
| Jan. 23... | 2.14 p.m. | 12                        | -----          | 40     | 11                    | -----          | 41     | 64                    | 14             | -----  |
| Jan. 24... | 2.14 p.m. | 20                        | -----          | 32     | 31                    | -----          | 21     | 29                    | -----          | 23     |
| Jan. 25... | 2.14 p.m. | 20                        | -----          | 32     | 17                    | -----          | 35     | 31                    | -----          | 21     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 2.14 p.m. | 15                        | -----          | 37     | 15                    | -----          | 37     | 33                    | -----          | 19     |
| Jan. 28... | 2.14 p.m. | 28                        | -----          | 24     | 37                    | -----          | 15     | 35                    | -----          | 17     |
| Jan. 29... | 2.14 p.m. | 14                        | -----          | 38     | 14                    | -----          | 38     | 29                    | -----          | 23     |
| Jan. 30... | 2.14 p.m. | 17                        | -----          | 35     | 19                    | -----          | 33     | 22                    | -----          | 30     |
| Jan. 31... | 2.14 p.m. | 15                        | -----          | 37     | 21                    | -----          | 31     | 25                    | -----          | 27     |
| Jan. 20... | 2.34 p.m. | 15                        | -----          | 37     | 24                    | -----          | 28     | -----                 | -----          | -----  |
| Jan. 21... | 2.34 p.m. | 7                         | -----          | 45     | 13                    | -----          | 39     | -----                 | -----          | -----  |
| Jan. 22... | 2.34 p.m. | 8                         | -----          | 44     | 17                    | -----          | 35     | 46                    | -----          | 6      |
| Jan. 23... | 2.34 p.m. | 14                        | -----          | 38     | 17                    | -----          | 35     | 50                    | -----          | 2      |
| Jan. 24... | 2.34 p.m. | 10                        | -----          | 42     | 25                    | -----          | 27     | 53                    | 1              | -----  |
| Jan. 25... | 2.34 p.m. | 15                        | -----          | 37     | 18                    | -----          | 34     | 42                    | -----          | 10     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 2.34 p.m. | 14                        | -----          | 38     | 20                    | -----          | 32     | 37                    | -----          | 15     |
| Jan. 28... | 2.34 p.m. | 19                        | -----          | 33     | 19                    | -----          | 33     | 27                    | -----          | 25     |
| Jan. 29... | 2.34 p.m. | 9                         | -----          | 43     | 14                    | -----          | 38     | 27                    | -----          | 25     |
| Jan. 30... | 2.34 p.m. | 13                        | -----          | 39     | 18                    | -----          | 34     | 23                    | -----          | 29     |
| Jan. 31... | 2.34 p.m. | 18                        | -----          | 34     | 26                    | -----          | 26     | 43                    | -----          | 9      |
| Jan. 20... | 2.54 p.m. | 17                        | -----          | 35     | 19                    | -----          | 33     | -----                 | -----          | -----  |
| Jan. 21... | 2.54 p.m. | 20                        | -----          | 32     | 28                    | -----          | 34     | -----                 | -----          | -----  |
| Jan. 22... | 2.54 p.m. | 13                        | -----          | 39     | 21                    | -----          | 31     | 45                    | -----          | 7      |
| Jan. 23... | 2.54 p.m. | 19                        | -----          | 33     | 16                    | -----          | 36     | 46                    | -----          | 6      |
| Jan. 24... | 2.54 p.m. | 24                        | -----          | 28     | 26                    | -----          | 26     | 42                    | -----          | 10     |
| Jan. 25... | 2.54 p.m. | 18                        | -----          | 34     | 13                    | -----          | 39     | 41                    | -----          | 11     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 2.54 p.m. | 16                        | -----          | 36     | 26                    | -----          | 26     | 39                    | -----          | 13     |
| Jan. 28... | 2.54 p.m. | 20                        | -----          | 32     | 22                    | -----          | 30     | 52                    | -----          | -----  |
| Jan. 29... | 2.54 p.m. | 18                        | -----          | 34     | 18                    | -----          | 34     | 45                    | -----          | 7      |
| Jan. 30... | 2.54 p.m. | 16                        | -----          | 36     | 25                    | -----          | 27     | 30                    | -----          | 22     |
| Jan. 31... | 2.54 p.m. | 28                        | -----          | 24     | 30                    | -----          | 22     | 24                    | -----          | 28     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 3.14 p.m. | 22                        | -----          | 30     | 21                    | -----          | 31     | -----                 | -----          | -----  |
| Jan. 21... | 3.14 p.m. | 19                        | -----          | 33     | 21                    | -----          | 31     | -----                 | -----          | -----  |
| Jan. 22... | 3.14 p.m. | 8                         | -----          | 44     | 10                    | -----          | 42     | 20                    | -----          | 32     |
| Jan. 23... | 3.14 p.m. | 17                        | -----          | 35     | 16                    | -----          | 36     | 19                    | -----          | 33     |
| Jan. 24... | 3.14 p.m. | 18                        | -----          | 34     | 18                    | -----          | 34     | 24                    | -----          | 28     |
| Jan. 25... | 3.14 p.m. | 28                        | -----          | 24     | 32                    | -----          | 20     | 42                    | -----          | 10     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 3.14 p.m. | 24                        | -----          | 28     | 27                    | -----          | 25     | 22                    | -----          | 30     |
| Jan. 28... | 3.14 p.m. | 11                        | -----          | 41     | 23                    | -----          | 29     | 27                    | -----          | 25     |
| Jan. 29... | 3.14 p.m. | 21                        | -----          | 31     | 25                    | -----          | 27     | 29                    | -----          | 23     |
| Jan. 30... | 3.14 p.m. | 9                         | -----          | 43     | 15                    | -----          | 37     | 29                    | -----          | 23     |
| Jan. 31... | 3.14 p.m. | 8                         | -----          | 44     | 11                    | -----          | 41     | 13                    | -----          | 39     |
| Jan. 20... | 3.34 p.m. | 31                        | -----          | 21     | 37                    | -----          | 15     | -----                 | -----          | -----  |
| Jan. 21... | 3.34 p.m. | 9                         | -----          | 43     | 11                    | -----          | 41     | -----                 | -----          | -----  |
| Jan. 22... | 3.34 p.m. | 16                        | -----          | 36     | 11                    | -----          | 41     | 44                    | -----          | 8      |
| Jan. 23... | 3.34 p.m. | 26                        | -----          | 26     | 24                    | -----          | 28     | 24                    | -----          | 28     |
| Jan. 24... | 3.34 p.m. | 25                        | -----          | 27     | 34                    | -----          | 18     | 17                    | -----          | 35     |
| Jan. 25... | 3.34 p.m. | 25                        | -----          | 27     | 18                    | -----          | 34     | 24                    | -----          | 28     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 3.34 p.m. | 18                        | -----          | 34     | 23                    | -----          | 29     | 43                    | -----          | 9      |
| Jan. 28... | 3.34 p.m. | 22                        | -----          | 30     | 38                    | -----          | 14     | 12                    | -----          | 40     |
| Jan. 29... | 3.34 p.m. | 23                        | -----          | 29     | 29                    | -----          | 23     | 20                    | -----          | 32     |
| Jan. 30... | 3.34 p.m. | 12                        | -----          | 40     | 17                    | -----          | 35     | 24                    | -----          | 28     |
| Jan. 31... | 3.34 p.m. | 24                        | -----          | 28     | 31                    | -----          | 21     | 44                    | -----          | 8      |
| Jan. 20... | 3.54 p.m. | 16                        | -----          | 36     | 25                    | -----          | 27     | -----                 | -----          | -----  |
| Jan. 21... | 3.54 p.m. | 26                        | -----          | 26     | 31                    | -----          | 21     | -----                 | -----          | -----  |
| Jan. 22... | 3.54 p.m. | 19                        | -----          | 33     | 21                    | -----          | 31     | 17                    | -----          | 35     |
| Jan. 23... | 3.54 p.m. | 30                        | -----          | 22     | 30                    | -----          | 22     | 69                    | 17             | -----  |
| Jan. 24... | 3.54 p.m. | 18                        | -----          | 34     | 18                    | -----          | 34     | 26                    | -----          | 26     |
| Jan. 25... | 3.54 p.m. | 22                        | -----          | 30     | 24                    | -----          | 28     | 31                    | -----          | 21     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 3.54 p.m. | 29                        | -----          | 23     | 30                    | -----          | 22     | 19                    | -----          | 33     |
| Jan. 28... | 3.54 p.m. | 21                        | -----          | 31     | 19                    | -----          | 33     | 34                    | -----          | 18     |
| Jan. 29... | 3.54 p.m. | 21                        | -----          | 23     | 37                    | -----          | 15     | 37                    | -----          | 15     |
| Jan. 30... | 3.54 p.m. | 28                        | -----          | 24     | 32                    | -----          | 20     | 45                    | -----          | 7      |
| Jan. 31... | 3.54 p.m. | 19                        | -----          | 33     | 28                    | -----          | 24     | 33                    | -----          | 19     |
| Jan. 20... | 4.14 p.m. | 31                        | -----          | 21     | 38                    | -----          | 14     | -----                 | -----          | -----  |
| Jan. 21... | 4.14 p.m. | 31                        | -----          | 21     | 47                    | -----          | 5      | -----                 | -----          | -----  |
| Jan. 22... | 4.14 p.m. | 21                        | -----          | 31     | 22                    | -----          | 30     | 53                    | 1              | -----  |
| Jan. 23... | 4.14 p.m. | 35                        | -----          | 17     | 32                    | -----          | 20     | 37                    | -----          | 15     |
| Jan. 24... | 4.14 p.m. | 26                        | -----          | 26     | 28                    | -----          | 24     | 29                    | -----          | 23     |
| Jan. 25... | 4.14 p.m. | 25                        | -----          | 27     | 33                    | -----          | 19     | 43                    | -----          | 9      |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 4.14 p.m. | 26                        | -----          | 26     | 29                    | -----          | 23     | 33                    | -----          | 19     |
| Jan. 28... | 4.14 p.m. | 40                        | -----          | 12     | 36                    | -----          | 16     | 55                    | 2              | -----  |
| Jan. 29... | 4.14 p.m. | 49                        | -----          | 3      | 48                    | -----          | 4      | 48                    | -----          | 4      |
| Jan. 30... | 4.14 p.m. | 34                        | -----          | 18     | 40                    | -----          | 12     | 22                    | -----          | 30     |
| Jan. 31... | 4.14 p.m. | 27                        | -----          | 25     | 30                    | -----          | 22     | 41                    | -----          | 11     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 4.34 p.m. | 20                        | -----          | 32     | 23                    | -----          | 29     | -----                 | -----          | -----  |
| Jan. 21... | 4.34 p.m. | 29                        | -----          | 23     | 32                    | -----          | 20     | -----                 | -----          | -----  |
| Jan. 22... | 4.34 p.m. | 19                        | -----          | 33     | 10                    | -----          | 42     | 39                    | -----          | 13     |
| Jan. 23... | 4.34 p.m. | 22                        | -----          | 30     | 33                    | -----          | 19     | 63                    | 11             | -----  |
| Jan. 24... | 4.34 p.m. | 16                        | -----          | 36     | 19                    | -----          | 33     | 55                    | 3              | -----  |
| Jan. 25... | 4.34 p.m. | 24                        | -----          | 28     | 35                    | -----          | 17     | 49                    | -----          | 2      |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 4.34 p.m. | 16                        | -----          | 36     | 30                    | -----          | 22     | 33                    | -----          | 19     |
| Jan. 28... | 4.34 p.m. | 16                        | -----          | 36     | 26                    | -----          | 26     | 34                    | -----          | 18     |
| Jan. 29... | 4.34 p.m. | 18                        | -----          | 34     | 30                    | -----          | 22     | 33                    | -----          | 19     |
| Jan. 30... | 4.34 p.m. | 34                        | -----          | 18     | 26                    | -----          | 26     | 44                    | -----          | 8      |
| Jan. 31... | 4.34 p.m. | 25                        | -----          | 27     | 31                    | -----          | 21     | 42                    | -----          | 10     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 4.54 p.m. | 43                        | -----          | 9      | 40                    | -----          | 12     | -----                 | -----          | -----  |
| Jan. 21... | 4.54 p.m. | 48                        | -----          | 4      | 38                    | -----          | 14     | -----                 | -----          | -----  |
| Jan. 22... | 4.54 p.m. | 16                        | -----          | 36     | 18                    | -----          | 34     | 46                    | -----          | 6      |
| Jan. 23... | 4.54 p.m. | 40                        | -----          | 12     | 36                    | -----          | 16     | 30                    | -----          | 22     |
| Jan. 24... | 4.54 p.m. | 40                        | -----          | 12     | 44                    | -----          | 8      | 43                    | -----          | 9      |
| Jan. 25... | 4.54 p.m. | 31                        | -----          | 21     | 47                    | -----          | 5      | 67                    | 15             | -----  |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 4.54 p.m. | 48                        | -----          | 4      | 54                    | 2              | -----  | 19                    | -----          | 33     |
| Jan. 28... | 4.54 p.m. | 40                        | -----          | 12     | 46                    | -----          | 6      | 35                    | -----          | 17     |
| Jan. 29... | 4.54 p.m. | 48                        | -----          | 4      | 56                    | 4              | -----  | 47                    | -----          | 5      |
| Jan. 30... | 4.54 p.m. | 38                        | -----          | 14     | 48                    | -----          | 4      | 39                    | -----          | 13     |
| Jan. 31... | 4.54 p.m. | 37                        | -----          | 15     | 41                    | -----          | 11     | 35                    | -----          | 17     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 5.14 p.m. | 31                        | -----          | 21     | 30                    | -----          | 22     | -----                 | -----          | -----  |
| Jan. 21... | 5.14 p.m. | 30                        | -----          | 22     | 33                    | -----          | 19     | -----                 | -----          | -----  |
| Jan. 22... | 5.14 p.m. | 14                        | -----          | 38     | 15                    | -----          | 37     | 76                    | 24             | -----  |
| Jan. 23... | 5.14 p.m. | 26                        | -----          | 26     | 25                    | -----          | 27     | 42                    | -----          | 10     |
| Jan. 24... | 5.14 p.m. | 22                        | -----          | 30     | 23                    | -----          | 29     | 28                    | -----          | 24     |
| Jan. 25... | 5.14 p.m. | 29                        | -----          | 23     | 34                    | -----          | 18     | 54                    | 2              | -----  |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 5.14 p.m. | 17                        | -----          | 35     | 26                    | -----          | 26     | 32                    | -----          | 20     |
| Jan. 28... | 5.14 p.m. | 20                        | -----          | 32     | 27                    | -----          | 25     | 28                    | -----          | 24     |
| Jan. 29... | 5.14 p.m. | 25                        | -----          | 27     | 31                    | -----          | 21     | 44                    | -----          | 8      |
| Jan. 30... | 5.14 p.m. | 19                        | -----          | 33     | 29                    | -----          | 23     | 43                    | -----          | 9      |
| Jan. 31... | 5.14 p.m. | 24                        | -----          | 28     | 28                    | -----          | 24     | 29                    | -----          | 23     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 5.34 p.m. | 28                        | -----          | 24     | 32                    | -----          | 20     | -----                 | -----          | -----  |
| Jan. 21... | 5.34 p.m. | 14                        | -----          | 38     | 16                    | -----          | 36     | -----                 | -----          | -----  |
| Jan. 22... | 5.34 p.m. | 15                        | -----          | 37     | 19                    | -----          | 33     | 14                    | -----          | 38     |
| Jan. 23... | 5.34 p.m. | 26                        | -----          | 26     | 27                    | -----          | 25     | 26                    | -----          | 26     |
| Jan. 24... | 5.34 p.m. | 29                        | -----          | 23     | 31                    | -----          | 21     | 12                    | -----          | 40     |
| Jan. 25... | 5.34 p.m. | 30                        | -----          | 22     | 38                    | -----          | 14     | 20                    | -----          | 32     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 5.34 p.m. | 19                        | -----          | 33     | 18                    | -----          | 34     | 21                    | -----          | 31     |
| Jan. 28... | 5.34 p.m. | 28                        | -----          | 24     | 36                    | -----          | 16     | 40                    | -----          | 12     |
| Jan. 29... | 5.34 p.m. | 18                        | -----          | 34     | 18                    | -----          | 34     | 28                    | -----          | 24     |
| Jan. 30... | 5.34 p.m. | 24                        | -----          | 28     | 25                    | -----          | 27     | 12                    | -----          | 40     |
| Jan. 31... | 5.34 p.m. | 23                        | -----          | 29     | 20                    | -----          | 32     | 14                    | -----          | 38     |

## OVERLOADING OF CARS—Continued.

| Date.       | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|-------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|             |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20.... | 5.54 p.m. | 18                        | -----          | 34     | 16                    | -----          | 36     | -----                 | -----          | -----  |
| Jan. 21.... | 5.54 p.m. | 16                        | -----          | 36     | 16                    | -----          | 36     | -----                 | -----          | -----  |
| Jan. 22.... | 5.54 p.m. | 34                        | -----          | 18     | 40                    | -----          | 12     | 38                    | -----          | 14     |
| Jan. 23.... | 5.54 p.m. | 15                        | -----          | 37     | 17                    | -----          | 35     | 15                    | -----          | 37     |
| Jan. 24.... | 5.54 p.m. | 23                        | -----          | 29     | 24                    | -----          | 28     | 20                    | -----          | 32     |
| Jan. 25.... | 5.54 p.m. | 22                        | -----          | 30     | 29                    | -----          | 23     | 43                    | -----          | 9      |
| Jan. 26.... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.... | 5.54 p.m. | 26                        | -----          | 26     | 33                    | -----          | 19     | 39                    | -----          | 13     |
| Jan. 28.... | 5.54 p.m. | 13                        | -----          | 39     | 14                    | -----          | 38     | 13                    | -----          | 39     |
| Jan. 29.... | 5.54 p.m. | 14                        | -----          | 38     | 9                     | -----          | 43     | 24                    | -----          | 28     |
| Jan. 30.... | 5.54 p.m. | 11                        | -----          | 41     | 8                     | -----          | 44     | 14                    | -----          | 38     |
| Jan. 31.... | 5.54 p.m. | 8                         | -----          | 44     | 14                    | -----          | 38     | 19                    | -----          | 33     |
|             |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20.... | 6.14 p.m. | 11                        | -----          | 41     | 15                    | -----          | 37     | -----                 | -----          | -----  |
| Jan. 21.... | 6.14 p.m. | 16                        | -----          | 36     | 14                    | -----          | 38     | -----                 | -----          | -----  |
| Jan. 22.... | 6.14 p.m. | 7                         | -----          | 45     | 23                    | -----          | 29     | 36                    | -----          | 16     |
| Jan. 23.... | 6.14 p.m. | 13                        | -----          | 39     | 10                    | -----          | 42     | 16                    | -----          | 36     |
| Jan. 24.... | 6.14 p.m. | 18                        | -----          | 34     | 15                    | -----          | 37     | 44                    | -----          | 8      |
| Jan. 25.... | 6.14 p.m. | 4                         | -----          | 48     | 10                    | -----          | 42     | 23                    | -----          | 29     |
| Jan. 26.... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.... | 6.14 p.m. | 11                        | -----          | 41     | 15                    | -----          | 37     | 37                    | -----          | 15     |
| Jan. 28.... | 6.14 p.m. | 8                         | -----          | 44     | 8                     | -----          | 44     | 17                    | -----          | 45     |
| Jan. 29.... | 6.14 p.m. | 15                        | -----          | 37     | 23                    | -----          | 29     | 31                    | -----          | 21     |
| Jan. 30.... | 6.14 p.m. | 6                         | -----          | 46     | 9                     | -----          | 43     | 32                    | -----          | 20     |
| Jan. 31.... | 6.14 p.m. | 12                        | -----          | 40     | 16                    | -----          | 36     | 35                    | -----          | 17     |
|             |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20.... | 6.34 p.m. | 16                        | -----          | 36     | 21                    | -----          | 31     | -----                 | -----          | -----  |
| Jan. 21.... | 6.34 p.m. | 8                         | -----          | 44     | 8                     | -----          | 44     | -----                 | -----          | -----  |
| Jan. 22.... | 6.34 p.m. | 11                        | -----          | 41     | 27                    | -----          | 25     | 61                    | 9              | -----  |
| Jan. 23.... | 6.34 p.m. | 1                         | -----          | 51     | 4                     | -----          | 48     | 60                    | 8              | -----  |
| Jan. 24.... | 6.34 p.m. | 8                         | -----          | 44     | 12                    | -----          | 40     | 26                    | -----          | 26     |
| Jan. 25.... | 6.34 p.m. | 28                        | -----          | 24     | 36                    | -----          | 16     | 57                    | 5              | -----  |
| Jan. 26.... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.... | 6.34 p.m. | 7                         | -----          | 45     | 12                    | -----          | 40     | 43                    | -----          | 9      |
| Jan. 28.... | 6.34 p.m. | 6                         | -----          | 42     | 13                    | -----          | 39     | 42                    | -----          | 10     |
| Jan. 29.... | 6.34 p.m. | 8                         | -----          | 44     | 8                     | -----          | 44     | 52                    | -----          | -----  |
| Jan. 30.... | 6.34 p.m. | 10                        | -----          | 42     | 33                    | -----          | 19     | 61                    | 9              | -----  |
| Jan. 31.... | 6.34 p.m. | 11                        | -----          | 41     | 11                    | -----          | 41     | 64                    | 12             | -----  |
|             |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20.... | 6.54 p.m. | 15                        | -----          | 37     | 25                    | -----          | 27     | -----                 | -----          | -----  |
| Jan. 21.... | 6.54 p.m. | 9                         | -----          | 43     | 7                     | -----          | 45     | -----                 | -----          | -----  |
| Jan. 22.... | 6.54 p.m. | 10                        | -----          | 42     | 12                    | -----          | 40     | 13                    | -----          | 39     |
| Jan. 23.... | 6.54 p.m. | 21                        | -----          | 31     | 37                    | -----          | 15     | 81                    | 29             | -----  |
| Jan. 24.... | 6.54 p.m. | 11                        | -----          | 41     | 3                     | -----          | 49     | 16                    | -----          | 36     |
| Jan. 25.... | 6.54 p.m. | 13                        | -----          | 39     | 21                    | -----          | 31     | 45                    | -----          | 7      |
| Jan. 26.... | Sunday    | -----                     | -----          | -----  | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.... | 6.54 p.m. | 9                         | -----          | 43     | 29                    | -----          | 23     | 75                    | 23             | -----  |
| Jan. 28.... | 6.54 p.m. | 13                        | -----          | 39     | 28                    | -----          | 24     | 76                    | 24             | -----  |
| Jan. 29.... | 6.54 p.m. | 9                         | -----          | 43     | 16                    | -----          | 36     | 43                    | -----          | 9      |
| Jan. 30.... | 6.54 p.m. | 14                        | -----          | 38     | 18                    | -----          | 34     | 49                    | -----          | 3      |
| Jan. 31.... | 6.54 p.m. | 13                        | -----          | 39     | 21                    | -----          | 31     | 45                    | -----          | 7      |



## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 7.14 p.m. | 8                         | -----          | 44     | 7                     | -----          | 45     | -----                 | -----          | -----  |
| Jan. 21... | 7.14 p.m. | 4                         | -----          | 48     | 4                     | -----          | 48     | -----                 | -----          | -----  |
| Jan. 22... | 7.14 p.m. | 13                        | -----          | 39     | 14                    | -----          | 38     | 67                    | 15             | -----  |
| Jan. 23... | 7.14 p.m. | 8                         | -----          | 44     | 12                    | -----          | 40     | 48                    | -----          | 4      |
| Jan. 24... | 7.14 p.m. | 11                        | -----          | 41     | 4                     | -----          | 48     | 39                    | -----          | 13     |
| Jan. 25... | 7.14 p.m. | 27                        | -----          | 25     | 41                    | -----          | 11     | 75                    | 23             | -----  |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.14 p.m. | 12                        | -----          | 40     | 16                    | -----          | 36     | 36                    | -----          | 16     |
| Jan. 28... | 7.14 p.m. | 7                         | -----          | 45     | 5                     | -----          | 47     | 30                    | -----          | 22     |
| Jan. 29... | 7.14 p.m. | 9                         | -----          | 43     | 10                    | -----          | 42     | 23                    | -----          | 29     |
| Jan. 30... | 7.14 p.m. | 10                        | -----          | 42     | 10                    | -----          | 42     | 35                    | -----          | 17     |
| Jan. 31... | 7.14 p.m. | 5                         | -----          | 47     | 5                     | -----          | 47     | 28                    | -----          | 24     |
| Jan. 20... | 7.34 p.m. | 5                         | -----          | 47     | 34                    | -----          | 18     | -----                 | -----          | -----  |
| Jan. 21... | 7.34 p.m. | 5                         | -----          | 47     | 9                     | -----          | 43     | -----                 | -----          | -----  |
| Jan. 22... | 7.34 p.m. | 7                         | -----          | 45     | 19                    | -----          | 33     | 40                    | -----          | 12     |
| Jan. 23... | 7.34 p.m. | 4                         | -----          | 48     | 8                     | -----          | 44     | 22                    | -----          | 30     |
| Jan. 24... | 7.34 p.m. | 5                         | -----          | 47     | 6                     | -----          | 46     | 17                    | -----          | 35     |
| Jan. 25... | 7.34 p.m. | 13                        | -----          | 39     | 12                    | -----          | 40     | 58                    | 6              | -----  |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.34 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 24                    | -----          | 28     |
| Jan. 28... | 7.34 p.m. | 7                         | -----          | 45     | 3                     | -----          | 49     | 17                    | -----          | 35     |
| Jan. 29... | 7.34 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 28                    | -----          | 24     |
| Jan. 30... | 7.34 p.m. | 12                        | -----          | 40     | 14                    | -----          | 38     | 28                    | -----          | 34     |
| Jan. 31... | 7.34 p.m. | 16                        | -----          | 36     | 8                     | -----          | 44     | 27                    | -----          | 25     |
| Jan. 20... | 7.54 p.m. | 1                         | -----          | 51     | 7                     | -----          | 45     | -----                 | -----          | -----  |
| Jan. 21... | 7.54 p.m. | 4                         | -----          | 48     | 4                     | -----          | 48     | -----                 | -----          | -----  |
| Jan. 22... | 7.54 p.m. | 4                         | -----          | 48     | 12                    | -----          | 40     | 48                    | -----          | 4      |
| Jan. 23... | 7.54 p.m. | 3                         | -----          | 49     | 7                     | -----          | 45     | 30                    | -----          | 22     |
| Jan. 24... | 7.54 p.m. | 4                         | -----          | 48     | 7                     | -----          | 45     | 34                    | -----          | 18     |
| Jan. 25... | 7.54 p.m. | 8                         | -----          | 44     | 15                    | -----          | 37     | 19                    | -----          | 33     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 7.54 p.m. | 5                         | -----          | 47     | 4                     | -----          | 48     | 17                    | -----          | 35     |
| Jan. 28... | 7.54 p.m. | 4                         | -----          | 48     | 4                     | -----          | 48     | 20                    | -----          | 32     |
| Jan. 29... | 7.54 p.m. | 9                         | -----          | 43     | 8                     | -----          | 44     | 30                    | -----          | 32     |
| Jan. 30... | 7.54 p.m. | 3                         | -----          | 39     | 6                     | -----          | 46     | 30                    | -----          | 22     |
| Jan. 31... | 7.54 p.m. | 3                         | -----          | 49     | 5                     | -----          | 47     | 52                    | -----          | -----  |
| Jan. 20... | 8.14 p.m. | 4                         | -----          | 48     | 5                     | -----          | 47     | -----                 | -----          | -----  |
| Jan. 21... | 8.14 p.m. | 3                         | -----          | 49     | 4                     | -----          | 48     | -----                 | -----          | -----  |
| Jan. 22... | 8.14 p.m. | 7                         | -----          | 45     | 4                     | -----          | 48     | 21                    | -----          | 31     |
| Jan. 23... | 8.14 p.m. | 4                         | -----          | 48     | 7                     | -----          | 40     | 14                    | -----          | 38     |
| Jan. 24... | 8.14 p.m. | 4                         | -----          | 48     | 9                     | -----          | 43     | 27                    | -----          | 25     |
| Jan. 25... | 8.14 p.m. | 10                        | -----          | 42     | 12                    | -----          | 40     | 12                    | -----          | 40     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.14 p.m. | 7                         | -----          | 45     | 7                     | -----          | 45     | 23                    | -----          | 29     |
| Jan. 28... | 8.14 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 19                    | -----          | 33     |
| Jan. 29... | 8.14 p.m. | 5                         | -----          | 47     | 6                     | -----          | 46     | 20                    | -----          | 32     |
| Jan. 30... | 8.14 p.m. | 0                         | -----          | 52     | 9                     | -----          | 43     | 15                    | -----          | 37     |
| Jan. 31... | 8.14 p.m. | 2                         | -----          | 50     | 1                     | -----          | 51     | 25                    | -----          | 27     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.     | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|-----------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |           | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 8.34 p.m. | 5                         | -----          | 47     | 6                     | -----          | 46     | -----                 | -----          | -----  |
| Jan. 21... | 8.34 p.m. | 5                         | -----          | 47     | 10                    | -----          | 42     | -----                 | -----          | -----  |
| Jan. 22... | 8.34 p.m. | 3                         | -----          | 49     | 6                     | -----          | 46     | 31                    | -----          | 21     |
| Jan. 23... | 8.34 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 12                    | -----          | 40     |
| Jan. 24... | 8.34 p.m. | 5                         | -----          | 47     | 7                     | -----          | 45     | 18                    | -----          | 34     |
| Jan. 25... | 8.34 p.m. | 7                         | -----          | 45     | 7                     | -----          | 45     | 34                    | -----          | 18     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.34 p.m. | 3                         | -----          | 49     | 5                     | -----          | 47     | 24                    | -----          | 28     |
| Jan. 28... | 8.34 p.m. | 4                         | -----          | 48     | 5                     | -----          | 47     | 11                    | -----          | 31     |
| Jan. 29... | 8.34 p.m. | 4                         | -----          | 48     | 6                     | -----          | 46     | 33                    | -----          | 19     |
| Jan. 30... | 8.34 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 18                    | -----          | 34     |
| Jan. 31... | 8.34 p.m. | 4                         | -----          | 48     | 6                     | -----          | 46     | 11                    | -----          | 41     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 8.54 p.m. | 1                         | -----          | 51     | 8                     | -----          | 44     | -----                 | -----          | -----  |
| Jan. 21... | 8.54 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | -----                 | -----          | -----  |
| Jan. 22... | 8.34 p.m. | 3                         | -----          | 49     | 2                     | -----          | 50     | 16                    | -----          | 36     |
| Jan. 23... | 8.54 p.m. | 4                         | -----          | 48     | 5                     | -----          | 47     | 27                    | -----          | 25     |
| Jan. 24... | 8.54 p.m. | 10                        | -----          | 42     | 14                    | -----          | 38     | 19                    | -----          | 33     |
| Jan. 25... | 8.54 p.m. | 3                         | -----          | 48     | 5                     | -----          | 47     | 5                     | -----          | 47     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 8.54 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 15                    | -----          | 37     |
| Jan. 28... | 8.54 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 30                    | -----          | 22     |
| Jan. 29... | 8.54 p.m. | 5                         | -----          | 47     | 6                     | -----          | 46     | 16                    | -----          | 36     |
| Jan. 30... | 8.54 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 23                    | -----          | 29     |
| Jan. 31... | 8.54 p.m. | 0                         | -----          | 52     | 2                     | -----          | 50     | 62                    | 10             | -----  |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 9.14 p.m. | 5                         | -----          | 47     | 6                     | -----          | 46     | -----                 | -----          | -----  |
| Jan. 21... | 9.14 p.m. | 3                         | -----          | 49     | 4                     | -----          | 48     | -----                 | -----          | -----  |
| Jan. 22... | 9.14 p.m. | 4                         | -----          | 48     | 7                     | -----          | 45     | 22                    | -----          | 30     |
| Jan. 23... | 9.14 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 19                    | -----          | 33     |
| Jan. 24... | 9.14 p.m. | 3                         | -----          | 49     | 4                     | -----          | 48     | 18                    | -----          | 34     |
| Jan. 25... | 9.14 p.m. | 0                         | -----          | 52     | 7                     | -----          | 45     | 12                    | -----          | 40     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.14 p.m. | 2                         | -----          | 50     | 5                     | -----          | 47     | 14                    | -----          | 38     |
| Jan. 28... | 9.14 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | 41                    | -----          | 11     |
| Jan. 29... | 9.14 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 10                    | -----          | 42     |
| Jan. 30... | 9.14 p.m. | 3                         | -----          | 49     | 7                     | -----          | 45     | 21                    | -----          | 31     |
| Jan. 31... | 9.14 p.m. | 3                         | -----          | 49     | 5                     | -----          | 47     | 29                    | -----          | 23     |
|            |           |                           |                |        |                       |                |        |                       |                |        |
| Jan. 20... | 9.34 p.m. | 2                         | -----          | 50     | 1                     | -----          | 51     | -----                 | -----          | -----  |
| Jan. 21... | 9.34 p.m. | 5                         | -----          | 47     | 3                     | -----          | 49     | -----                 | -----          | -----  |
| Jan. 22... | 9.34 p.m. | 3                         | -----          | 49     | 5                     | -----          | 47     | 16                    | -----          | 36     |
| Jan. 23... | 9.34 p.m. | 2                         | -----          | 50     | 3                     | -----          | 49     | 21                    | -----          | 31     |
| Jan. 24... | 9.34 p.m. | 2                         | -----          | 50     | 7                     | -----          | 45     | 29                    | -----          | 23     |
| Jan. 25... | 9.34 p.m. | 5                         | -----          | 47     | 5                     | -----          | 47     | 5                     | -----          | 47     |
| Jan. 26... | Sunday    |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.34 p.m. | 3                         | -----          | 49     | 5                     | -----          | 47     | 24                    | -----          | 28     |
| Jan. 28... | 9.34 p.m. | 8                         | -----          | 44     | 7                     | -----          | 35     | 14                    | -----          | 38     |
| Jan. 29... | 9.34 p.m. | 0                         | -----          | 52     | 3                     | -----          | 49     | 11                    | -----          | 41     |
| Jan. 30... | 9.34 p.m. | 1                         | -----          | 51     | 2                     | -----          | 50     | 6                     | -----          | 46     |
| Jan. 31... | 9.34 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 13                    | -----          | 23     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 9.54 p.m.  | 1                         | -----          | 51     | 4                     | -----          | 28     | -----                 | -----          | -----  |
| Jan. 21... | 9.54 p.m.  | 1                         | -----          | 51     | 3                     | -----          | 29     | -----                 | -----          | -----  |
| Jan. 22... | 9.54 p.m.  | 13                        | -----          | 39     | 11                    | -----          | 41     | 13                    | -----          | 31     |
| Jan. 23... | 9.54 p.m.  | 0                         | -----          | 52     | 3                     | -----          | 49     | 22                    | -----          | 30     |
| Jan. 24... | 9.54 p.m.  | 12                        | -----          | 40     | 13                    | -----          | 39     | 24                    | -----          | 28     |
| Jan. 25... | 9.54 p.m.  | 6                         | -----          | 46     | 10                    | -----          | 42     | 18                    | -----          | 39     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 9.54 p.m.  | 3                         | -----          | 49     | 3                     | -----          | 49     | 12                    | -----          | 40     |
| Jan. 28... | 9.54 p.m.  | 6                         | -----          | 46     | 1                     | -----          | 51     | 14                    | -----          | 38     |
| Jan. 29... | 9.54 p.m.  | 3                         | -----          | 49     | 7                     | -----          | 45     | 21                    | -----          | 31     |
| Jan. 30... | 9.54 p.m.  | 3                         | -----          | 49     | 3                     | -----          | 49     | 39                    | -----          | 13     |
| Jan. 31... | 9.54 p.m.  | 3                         | -----          | 39     | 4                     | -----          | 38     | 13                    | -----          | 39     |
| Jan. 20... | 10.14 p.m. | 0                         | -----          | 52     | 3                     | -----          | 49     | -----                 | -----          | -----  |
| Jan. 21... | 10.14 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | -----                 | -----          | -----  |
| Jan. 22... | 10.14 p.m. | 3                         | -----          | 49     | 55                    | -----          | 47     | 13                    | -----          | 39     |
| Jan. 23... | 10.14 p.m. | 4                         | -----          | 48     | 4                     | -----          | 48     | 16                    | -----          | 36     |
| Jan. 24... | 10.14 p.m. | 0                         | -----          | 52     | 3                     | -----          | 49     | 10                    | -----          | 42     |
| Jan. 25... | 10.14 p.m. | 5                         | -----          | 47     | 4                     | -----          | 48     | 15                    | -----          | 37     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.14 p.m. | 5                         | -----          | 47     | 5                     | -----          | 47     | 16                    | -----          | 36     |
| Jan. 28... | 10.14 p.m. | 7                         | -----          | 45     | 7                     | -----          | 45     | 23                    | -----          | 29     |
| Jan. 29... | 10.14 p.m. | 34                        | -----          | 18     | 36                    | -----          | 16     | 12                    | -----          | 40     |
| Jan. 30... | 10.14 p.m. | 3                         | -----          | 39     | 4                     | -----          | 48     | 34                    | -----          | 18     |
| Jan. 31... | 10.14 p.m. | 1                         | -----          | 51     | 4                     | -----          | 48     | 13                    | -----          | 39     |
| Jan. 20... | 10.34 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | -----                 | -----          | -----  |
| Jan. 21... | 10.34 p.m. | 1                         | -----          | 51     | 6                     | -----          | 46     | -----                 | -----          | -----  |
| Jan. 22... | 10.34 p.m. | 1                         | -----          | 51     | 3                     | -----          | 49     | 23                    | -----          | 29     |
| Jan. 23... | 10.34 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 14                    | -----          | 38     |
| Jan. 24... | 10.34 p.m. | 7                         | -----          | 45     | 3                     | -----          | 49     | 16                    | -----          | 36     |
| Jan. 25... | 10.34 p.m. | 3                         | -----          | 49     | 4                     | -----          | 48     | 6                     | -----          | 46     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.34 p.m. | 1                         | -----          | 51     | 3                     | -----          | 49     | 8                     | -----          | 44     |
| Jan. 28... | 10.34 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 7                     | -----          | 45     |
| Jan. 29... | 10.34 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 11                    | -----          | 41     |
| Jan. 30... | 10.34 p.m. | 3                         | -----          | 49     | 4                     | -----          | 48     | 10                    | -----          | 42     |
| Jan. 31... | 10.34 p.m. | 0                         | -----          | 52     | 2                     | -----          | 50     | 9                     | -----          | 43     |
| Jan. 20... | 10.54 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | -----                 | -----          | -----  |
| Jan. 21... | 10.54 p.m. | 2                         | -----          | 50     | 1                     | -----          | 51     | -----                 | -----          | -----  |
| Jan. 22... | 10.54 p.m. | 1                         | -----          | 51     | 2                     | -----          | 50     | 13                    | -----          | 39     |
| Jan. 23... | 10.54 p.m. | 6                         | -----          | 46     | 6                     | -----          | 46     | 11                    | -----          | 41     |
| Jan. 24... | 10.54 p.m. | 6                         | -----          | 52     | 2                     | -----          | 50     | 18                    | -----          | 34     |
| Jan. 25... | 10.54 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 12                    | -----          | 39     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 10.54 p.m. | 2                         | -----          | 50     | 1                     | -----          | 51     | 10                    | -----          | 42     |
| Jan. 28... | 10.54 p.m. | 2                         | -----          | 50     | 1                     | -----          | 51     | 3                     | -----          | 49     |
| Jan. 29... | 10.54 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 3                     | -----          | 49     |
| Jan. 30... | 10.54 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | 8                     | -----          | 44     |
| Jan. 31... | 10.54 p.m. | 0                         | -----          | 52     | 2                     | -----          | 50     | 9                     | -----          | 43     |

## OVERLOADING OF CARS—Continued.

| Date.      | Time.      | San Leandro East Limited. |                |        | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|------------|------------|---------------------------|----------------|--------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|            |            | Passen-<br>gers.          | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20... | 11.14 p.m. | 0                         | -----          | 52     | 5                     | -----          | 47     | -----                 | -----          | -----  |
| Jan. 21... | 11.14 p.m. | 0                         | -----          | 52     | 1                     | -----          | 51     | -----                 | -----          | -----  |
| Jan. 22... | 11.14 p.m. | 0                         | -----          | 52     | 3                     | -----          | 49     | 10                    | -----          | 42     |
| Jan. 23... | 11.14 p.m. | 7                         | -----          | 45     | 7                     | -----          | 45     | 17                    | -----          | 35     |
| Jan. 24... | 11.14 p.m. | 1                         | -----          | 51     | 0                     | -----          | 52     | 12                    | -----          | 40     |
| Jan. 25... | 11.14 p.m. | 0                         | -----          | 52     | 2                     | -----          | 50     | 51                    | -----          | 31     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.14 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | 3                     | -----          | 49     |
| Jan. 28... | 11.14 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 7                     | -----          | 45     |
| Jan. 29... | 11.14 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 4                     | -----          | 48     |
| Jan. 30... | 11.14 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 17                    | -----          | 35     |
| Jan. 31... | 11.14 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 22                    | -----          | 30     |
| Jan. 20... | 11.34 p.m. | 1                         | -----          | 51     | 0                     | -----          | 52     | -----                 | -----          | -----  |
| Jan. 21... | 11.34 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | -----                 | -----          | -----  |
| Jan. 22... | 11.34 p.m. | 0                         | -----          | 52     | 1                     | -----          | 51     | 14                    | -----          | 38     |
| Jan. 23... | 11.34 p.m. | 47                        | -----          | 5      | 49                    | -----          | 3      | 55                    | 3              | -----  |
| Jan. 24... | 11.34 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | 9                     | -----          | 43     |
| Jan. 25... | 11.34 p.m. | 0                         | -----          | 52     | 1                     | -----          | 51     | 12                    | -----          | 40     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.34 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | 3                     | -----          | 49     |
| Jan. 28... | 11.34 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | 15                    | -----          | 37     |
| Jan. 29... | 11.34 p.m. | 8                         | -----          | 44     | 10                    | -----          | 42     | 20                    | -----          | 32     |
| Jan. 30... | 11.34 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 21                    | -----          | 31     |
| Jan. 31... | 11.34 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 15                    | -----          | 37     |
| Jan. 20... | 11.54 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | -----                 | -----          | -----  |
| Jan. 21... | 11.54 p.m. | 4                         | -----          | 48     | 4                     | -----          | 48     | -----                 | -----          | -----  |
| Jan. 22... | 11.54 p.m. | 0                         | -----          | 52     | 0                     | -----          | 52     | 18                    | -----          | 34     |
| Jan. 23... | 11.54 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 7                     | -----          | 45     |
| Jan. 24... | 11.54 p.m. | 2                         | -----          | 50     | 2                     | -----          | 50     | 5                     | -----          | 47     |
| Jan. 25... | 11.54 p.m. | 3                         | -----          | 49     | 3                     | -----          | 49     | 42                    | -----          | 10     |
| Jan. 26... | Sunday     |                           |                |        |                       |                |        |                       |                |        |
| Jan. 27... | 11.54 p.m. | 0                         | -----          | 52     | 2                     | -----          | 50     | 6                     | -----          | 36     |
| Jan. 28... | 11.54 p.m. | 1                         | -----          | 51     | 2                     | -----          | 50     | 8                     | -----          | 44     |
| Jan. 29... | 11.54 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 11                    | -----          | 41     |
| Jan. 30... | 11.54 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 16                    | -----          | 36     |
| Jan. 31... | 11.54 p.m. | 1                         | -----          | 51     | 1                     | -----          | 51     | 11                    | -----          | 41     |

## OVERLOADING OF CARS—Continued.

## San Leandro Service.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 6.04 a.m. | 14                    | -----          | 38     | 2                     | -----          | 50     |
| Jan. 21..... | 6.04 a.m. | 14                    | -----          | 38     | 4                     | -----          | 48     |
| Jan. 22..... | 6.04 a.m. | 18                    | -----          | 34     | 1                     | -----          | 51     |
| Jan. 23..... | 6.04 a.m. | 36                    | -----          | 16     | 0                     | -----          | 52     |
| Jan. 24..... | 6.04 a.m. | 29                    | -----          | 23     | 0                     | -----          | 52     |
| Jan. 25..... | 6.04 a.m. | 17                    | -----          | 35     | 2                     | -----          | 50     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.04 a.m. | 21                    | -----          | 31     | 4                     | -----          | 48     |
| Jan. 28..... | 6.04 a.m. | 38                    | -----          | 14     | 0                     | -----          | 52     |
| Jan. 29..... | 6.04 a.m. | 20                    | -----          | 32     | 4                     | -----          | 48     |
| Jan. 30..... | 6.04 a.m. | 15                    | -----          | 37     | 2                     | -----          | 50     |
| Jan. 31..... | 6.04 a.m. | 13                    | -----          | 32     | 2                     | -----          | 50     |
| Jan. 20..... | 6.24 a.m. | 13                    | -----          | 39     | 4                     | -----          | 48     |
| Jan. 21..... | 6.24 a.m. | 51                    | -----          | 1      | 4                     | -----          | 48     |
| Jan. 22..... | 6.24 a.m. | 15                    | -----          | 37     | 4                     | -----          | 48     |
| Jan. 23..... | 6.24 a.m. | 13                    | -----          | 39     | 4                     | -----          | 48     |
| Jan. 24..... | 6.24 a.m. | 55                    | 3              | -----  | 7                     | -----          | 45     |
| Jan. 25..... | 6.24 a.m. | 36                    | -----          | 16     | 3                     | -----          | 49     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.24 a.m. | 40                    | -----          | 12     | 5                     | -----          | 47     |
| Jan. 28..... | 6.24 a.m. | 33                    | -----          | 19     | 0                     | -----          | 52     |
| Jan. 29..... | 6.24 a.m. | 45                    | -----          | 7      | 1                     | -----          | 51     |
| Jan. 30..... | 6.24 a.m. | 37                    | -----          | 15     | 3                     | -----          | 49     |
| Jan. 31..... | 6.24 a.m. | 34                    | -----          | 18     | 7                     | -----          | 45     |
| Jan. 20..... | 6.44 a.m. | 43                    | -----          | 9      | 8                     | -----          | 44     |
| Jan. 21..... | 6.44 a.m. | 22                    | -----          | 30     | 3                     | -----          | 49     |
| Jan. 22..... | 6.44 a.m. | 8                     | -----          | 44     | 3                     | -----          | 49     |
| Jan. 23..... | 6.44 a.m. | 11                    | -----          | 41     | 0                     | -----          | 52     |
| Jan. 24..... | 6.44 a.m. | 18                    | -----          | 34     | 0                     | -----          | 52     |
| Jan. 25..... | 6.44 a.m. | 19                    | -----          | 39     | 2                     | -----          | 50     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.44 a.m. | 13                    | -----          | 39     | 3                     | -----          | 49     |
| Jan. 28..... | 6.44 a.m. | 21                    | -----          | 31     | 1                     | -----          | 51     |
| Jan. 29..... | 6.44 a.m. | 15                    | -----          | 37     | 2                     | -----          | 50     |
| Jan. 30..... | 6.44 a.m. | 17                    | -----          | 35     | 0                     | -----          | 52     |
| Jan. 31..... | 6.44 a.m. | 17                    | -----          | 35     | 1                     | -----          | 51     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 7.09 a.m. | 11                    |                | 41     | 9                     |                | 43     |
| Jan. 21..... | 7.09 a.m. | 31                    |                | 21     | 1                     |                | 51     |
| Jan. 22..... | 7.09 a.m. | 11                    |                | 41     | 5                     |                | 47     |
| Jan. 23..... | 7.09 a.m. | 25                    |                | 27     | 7                     |                | 45     |
| Jan. 24..... | 7.09 a.m. | 57                    | 5              |        | 6                     |                | 46     |
| Jan. 25..... | 7.09 a.m. | 34                    |                | 18     | 7                     |                | 45     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.09 a.m. | 42                    |                | 10     | 11                    |                | 41     |
| Jan. 28..... | 7.09 a.m. | 48                    |                | 4      | 2                     |                | 50     |
| Jan. 29..... | 7.09 a.m. | 24                    |                | 28     | 4                     |                | 48     |
| Jan. 30..... | 7.09 a.m. | 24                    |                | 28     | 2                     |                | 50     |
| Jan. 31..... | 7.09 a.m. | 25                    |                | 27     | 2                     |                | 50     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 7.29 a.m. | 46                    |                | 6      | 7                     |                | 45     |
| Jan. 21..... | 7.29 a.m. | 33                    |                | 19     | 4                     |                | 48     |
| Jan. 22..... | 7.29 a.m. | 11                    |                | 41     | 6                     |                | 46     |
| Jan. 23..... | 7.29 a.m. | 36                    |                | 16     | 2                     |                | 50     |
| Jan. 24..... | 7.29 a.m. | 25                    |                | 27     | 4                     |                | 48     |
| Jan. 25..... | 7.29 a.m. | 28                    |                | 24     | 2                     |                | 50     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.29 a.m. | 32                    |                | 20     | 1                     |                | 51     |
| Jan. 28..... | 7.29 a.m. | 14                    |                | 38     | 1                     |                | 51     |
| Jan. 29..... | 7.29 a.m. | 27                    |                | 25     | 4                     |                | 48     |
| Jan. 30..... | 7.29 a.m. | 18                    |                | 34     | 3                     |                | 49     |
| Jan. 31..... | 7.29 a.m. | 32                    |                | 20     | 5                     |                | 47     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 7.49 a.m. | 27                    |                | 25     | 4                     |                | 40     |
| Jan. 21..... | 7.49 a.m. | 21                    |                | 31     | 10                    |                | 42     |
| Jan. 22..... | 7.49 a.m. | 11                    |                | 41     | 6                     |                | 46     |
| Jan. 23..... | 7.49 a.m. | 37                    |                | 15     | 0                     |                | 52     |
| Jan. 24..... | 7.49 a.m. | 20                    |                | 32     | 10                    |                | 42     |
| Jan. 25..... | 7.49 a.m. | 31                    |                | 21     | 16                    |                | 36     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.49 a.m. | 26                    |                | 26     | 5                     |                | 47     |
| Jan. 28..... | 7.49 a.m. | 23                    |                | 29     | 6                     |                | 46     |
| Jan. 29..... | 7.49 a.m. | 19                    |                | 33     | 0                     |                | 52     |
| Jan. 30..... | 7.49 a.m. | 27                    |                | 25     | 8                     |                | 44     |
| Jan. 31..... | 7.49 a.m. | 23                    |                | 29     | 3                     |                | 49     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 8.09 a.m. | 28                    |                | 24     | 13                    |                | 39     |
| Jan. 21..... | 8.09 a.m. | 22                    |                | 30     | 8                     |                | 44     |
| Jan. 22..... | 8.09 a.m. | 32                    |                | 20     | 6                     |                | 46     |
| Jan. 23..... | 8.09 a.m. | 30                    |                | 22     | 2                     |                | 50     |
| Jan. 24..... | 8.09 a.m. | 20                    |                | 32     | 4                     |                | 48     |
| Jan. 25..... | 8.09 a.m. | 22                    |                | 30     | 10                    |                | 42     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.09 a.m. | 23                    |                | 29     | 7                     |                | 45     |
| Jan. 28..... | 8.09 a.m. | 29                    |                | 23     | 6                     |                | 46     |
| Jan. 29..... | 8.09 a.m. | 20                    |                | 32     | 4                     |                | 48     |
| Jan. 30..... | 8.09 a.m. | 15                    |                | 37     | 2                     |                | 50     |
| Jan. 31..... | 8.09 a.m. | 18                    |                | 34     | 1                     |                | 51     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 8.29 a.m. | 22                    | -----          | 30     | 4                     | -----          | 48     |
| Jan. 21..... | 8.29 a.m. | 14                    | -----          | 38     | 1                     | -----          | 51     |
| Jan. 22..... | 8.29 a.m. | 20                    | -----          | 32     | 6                     | -----          | 46     |
| Jan. 23..... | 8.29 a.m. | 15                    | -----          | 37     | 6                     | -----          | 46     |
| Jan. 24..... | 8.29 a.m. | 13                    | -----          | 39     | 7                     | -----          | 45     |
| Jan. 25..... | 8.29 a.m. | 22                    | -----          | 30     | 4                     | -----          | 48     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.29 a.m. | 12                    | -----          | 40     | 9                     | -----          | 43     |
| Jan. 28..... | 8.29 a.m. | 8                     | -----          | 44     | 3                     | -----          | 49     |
| Jan. 29..... | 8.29 a.m. | 5                     | -----          | 47     | 8                     | -----          | 44     |
| Jan. 30..... | 8.29 a.m. | 28                    | -----          | 24     | 4                     | -----          | 48     |
| Jan. 31..... | 8.29 a.m. | 16                    | -----          | 36     | 5                     | -----          | 47     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 8.49 a.m. | 23                    | -----          | 29     | 2                     | -----          | 50     |
| Jan. 21..... | 8.49 a.m. | 8                     | -----          | 44     | 3                     | -----          | 49     |
| Jan. 22..... | 8.49 a.m. | 17                    | -----          | 35     | 9                     | -----          | 43     |
| Jan. 23..... | 8.49 a.m. | 22                    | -----          | 30     | 3                     | -----          | 49     |
| Jan. 24..... | 8.49 a.m. | 18                    | -----          | 34     | 8                     | -----          | 44     |
| Jan. 25..... | 8.49 a.m. | 34                    | -----          | 18     | 6                     | -----          | 46     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.49 a.m. | 26                    | -----          | 26     | 5                     | -----          | 47     |
| Jan. 28..... | 8.49 a.m. | 33                    | -----          | 19     | 14                    | -----          | 38     |
| Jan. 29..... | 8.49 a.m. | 31                    | -----          | 21     | 2                     | -----          | 50     |
| Jan. 30..... | 8.49 a.m. | 19                    | -----          | 33     | 5                     | -----          | 47     |
| Jan. 31..... | 8.49 a.m. | 21                    | -----          | 31     | 15                    | -----          | 37     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 9.04 a.m. | 26                    | -----          | 26     | 5                     | -----          | 47     |
| Jan. 21..... | 9.04 a.m. | 48                    | -----          | 4      | 7                     | -----          | 45     |
| Jan. 22..... | 9.04 a.m. | 41                    | -----          | 11     | 7                     | -----          | 45     |
| Jan. 23..... | 9.04 a.m. | 27                    | -----          | 25     | 6                     | -----          | 46     |
| Jan. 24..... | 9.04 a.m. | 26                    | -----          | 26     | 5                     | -----          | 47     |
| Jan. 25..... | 9.04 a.m. | 30                    | -----          | 22     | 5                     | -----          | 47     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 9.04 a.m. | 19                    | -----          | 33     | 2                     | -----          | 50     |
| Jan. 28..... | 9.04 a.m. | 33                    | -----          | 19     | 4                     | -----          | 48     |
| Jan. 29..... | 9.04 a.m. | 32                    | -----          | 20     | 18                    | -----          | 34     |
| Jan. 30..... | 9.04 a.m. | 32                    | -----          | 20     | 4                     | -----          | 48     |
| Jan. 31..... | 9.04 a.m. | 34                    | -----          | 18     | 7                     | -----          | 45     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 9.28 a.m. | 27                    | -----          | 25     | 2                     | -----          | 50     |
| Jan. 21..... | 9.28 a.m. | 20                    | -----          | 32     | 9                     | -----          | 43     |
| Jan. 22..... | 9.28 a.m. | 21                    | -----          | 31     | 6                     | -----          | 46     |
| Jan. 23..... | 9.28 a.m. | 32                    | -----          | 20     | 7                     | -----          | 45     |
| Jan. 24..... | 9.28 a.m. | 25                    | -----          | 27     | 2                     | -----          | 50     |
| Jan. 25..... | 9.28 a.m. | 26                    | -----          | 26     | 4                     | -----          | 48     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 9.28 a.m. | 38                    | -----          | 19     | 1                     | -----          | 51     |
| Jan. 28..... | 9.28 a.m. | 21                    | -----          | 31     | 4                     | -----          | 48     |
| Jan. 29..... | 9.28 a.m. | 14                    | -----          | 48     | 5                     | -----          | 47     |
| Jan. 30..... | 9.28 a.m. | 25                    | -----          | 27     | 1                     | -----          | 51     |
| Jan. 31..... | 9.28 a.m. | 30                    | -----          | 22     | 5                     | -----          | 47     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 9.48 a.m.  | 22                    | -----          | 30     | 6                     | -----          | 46     |
| Jan. 21..... | 9.48 a.m.  | 17                    | -----          | 35     | 6                     | -----          | 46     |
| Jan. 22..... | 9.48 a.m.  | 27                    | -----          | 25     | 2                     | -----          | 50     |
| Jan. 23..... | 9.48 a.m.  | 26                    | -----          | 26     | 11                    | -----          | 41     |
| Jan. 24..... | 9.48 a.m.  | 26                    | -----          | 26     | 4                     | -----          | 48     |
| Jan. 25..... | 9.48 a.m.  | 26                    | -----          | 26     | 5                     | -----          | 47     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 9.48 a.m.  | 22                    | -----          | 30     | 8                     | -----          | 44     |
| Jan. 28..... | 9.48 a.m.  | 11                    | -----          | 41     | 1                     | -----          | 51     |
| Jan. 29..... | 9.48 a.m.  | 23                    | -----          | 29     | 4                     | -----          | 48     |
| Jan. 30..... | 9.48 a.m.  | 34                    | -----          | 18     | 7                     | -----          | 45     |
| Jan. 31..... | 9.48 a.m.  | 18                    | -----          | 34     | 4                     | -----          | 48     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 10.08 a.m. | 30                    | -----          | 22     | 2                     | -----          | 50     |
| Jan. 21..... | 10.08 a.m. | 44                    | -----          | 8      | 7                     | -----          | 45     |
| Jan. 22..... | 10.08 a.m. | 23                    | -----          | 29     | 5                     | -----          | 47     |
| Jan. 23..... | 10.08 a.m. | 24                    | -----          | 28     | 7                     | -----          | 45     |
| Jan. 24..... | 10.08 a.m. | 26                    | -----          | 26     | 6                     | -----          | 46     |
| Jan. 25..... | 10.08 a.m. | 32                    | -----          | 20     | 10                    | -----          | 43     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.08 a.m. | 29                    | -----          | 23     | 6                     | -----          | 46     |
| Jan. 28..... | 10.08 a.m. | 18                    | -----          | 34     | 3                     | -----          | 49     |
| Jan. 29..... | 10.08 a.m. | 24                    | -----          | 28     | 2                     | -----          | 50     |
| Jan. 30..... | 10.08 a.m. | 26                    | -----          | 26     | 4                     | -----          | 48     |
| Jan. 31..... | 10.08 a.m. | 23                    | -----          | 29     | 3                     | -----          | 49     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 10.28 a.m. | 40                    | -----          | 12     | 19                    | -----          | 33     |
| Jan. 21..... | 10.28 a.m. | 43                    | -----          | 9      | 6                     | -----          | 46     |
| Jan. 22..... | 10.28 a.m. | 28                    | -----          | 26     | 8                     | -----          | 44     |
| Jan. 23..... | 10.28 a.m. | 25                    | -----          | 27     | 4                     | -----          | 48     |
| Jan. 24..... | 10.28 a.m. | 27                    | -----          | 25     | 0                     | -----          | 52     |
| Jan. 25..... | 10.28 a.m. | 32                    | -----          | 20     | 4                     | -----          | 48     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.28 a.m. | 41                    | -----          | 11     | 8                     | -----          | 44     |
| Jan. 28..... | 10.28 a.m. | 30                    | -----          | 22     | 11                    | -----          | 41     |
| Jan. 29..... | 10.28 a.m. | 32                    | -----          | 20     | 7                     | -----          | 45     |
| Jan. 30..... | 10.28 a.m. | 31                    | -----          | 21     | 11                    | -----          | 41     |
| Jan. 31..... | 10.28 a.m. | 38                    | -----          | 14     | 11                    | -----          | 41     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 10.48 a.m. | 32                    | -----          | 20     | 6                     | -----          | 46     |
| Jan. 21..... | 10.48 a.m. | 20                    | -----          | 32     | 31                    | -----          | 21     |
| Jan. 22..... | 10.48 a.m. | 27                    | -----          | 25     | 4                     | -----          | 48     |
| Jan. 23..... | 10.48 a.m. | 15                    | -----          | 37     | 6                     | -----          | 46     |
| Jan. 24..... | 10.48 a.m. | 10                    | -----          | 42     | 27                    | -----          | 25     |
| Jan. 25..... | 10.48 a.m. | 32                    | -----          | 20     | 5                     | -----          | 47     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.48 a.m. | 39                    | -----          | 13     | 4                     | -----          | 48     |
| Jan. 28..... | 10.48 a.m. | 33                    | -----          | 19     | 10                    | -----          | 42     |
| Jan. 29..... | 10.48 a.m. | 40                    | -----          | 12     | 8                     | -----          | 44     |
| Jan. 30..... | 10.48 a.m. | 43                    | -----          | 9      | 9                     | -----          | 43     |
| Jan. 31..... | 10.48 a.m. | 33                    | -----          | 19     | 3                     | -----          | 49     |



## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 11.08 a.m. | 35                    | -----          | 17     | 2                     | -----          | 50     |
| Jan. 21..... | 11.08 a.m. | 44                    | -----          | 8      | 7                     | -----          | 45     |
| Jan. 22..... | 11.08 a.m. | 31                    | -----          | 21     | 5                     | -----          | 47     |
| Jan. 23..... | 11.08 a.m. | 40                    | -----          | 12     | 4                     | -----          | 48     |
| Jan. 24..... | 11.08 a.m. | 23                    | -----          | 29     | 4                     | -----          | 48     |
| Jan. 25..... | 11.08 a.m. | 39                    | -----          | 13     | 2                     | -----          | 50     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.08 a.m. | 40                    | -----          | 12     | 6                     | -----          | 46     |
| Jan. 28..... | 11.08 a.m. | 19                    | -----          | 33     | 2                     | -----          | 50     |
| Jan. 29..... | 11.08 a.m. | 26                    | -----          | 26     | 11                    | -----          | 41     |
| Jan. 30..... | 11.08 a.m. | 28                    | -----          | 24     | 7                     | -----          | 45     |
| Jan. 31..... | 11.08 a.m. | 18                    | -----          | 34     | 2                     | -----          | 50     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 11.28 a.m. | 30                    | -----          | 22     | 2                     | -----          | 50     |
| Jan. 21..... | 11.28 a.m. | 24                    | -----          | 28     | 4                     | -----          | 48     |
| Jan. 22..... | 11.28 a.m. | 38                    | -----          | 14     | 11                    | -----          | 41     |
| Jan. 23..... | 11.28 a.m. | 38                    | -----          | 14     | 11                    | -----          | 41     |
| Jan. 24..... | 11.28 a.m. | 43                    | -----          | 9      | 8                     | -----          | 44     |
| Jan. 25..... | 11.28 a.m. | 51                    | -----          | 1      | 12                    | -----          | 40     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.28 a.m. | 32                    | -----          | 20     | 3                     | -----          | 49     |
| Jan. 28..... | 11.28 a.m. | 24                    | -----          | 28     | 4                     | -----          | 48     |
| Jan. 29..... | 11.28 a.m. | 38                    | -----          | 14     | 4                     | -----          | 48     |
| Jan. 30..... | 11.28 a.m. | 34                    | -----          | 18     | 3                     | -----          | 49     |
| Jan. 31..... | 11.28 a.m. | 37                    | -----          | 15     | 4                     | -----          | 48     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 11.48 a.m. | 44                    | -----          | 8      | 2                     | -----          | 50     |
| Jan. 21..... | 11.48 a.m. | 35                    | -----          | 17     | 3                     | -----          | 49     |
| Jan. 22..... | 11.48 a.m. | 34                    | -----          | 18     | 3                     | -----          | 49     |
| Jan. 23..... | 11.48 a.m. | 43                    | -----          | 9      | 7                     | -----          | 45     |
| Jan. 24..... | 11.48 a.m. | 21                    | -----          | 31     | 2                     | -----          | 50     |
| Jan. 25..... | 11.48 a.m. | 50                    | -----          | 2      | 19                    | -----          | 33     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.48 a.m. | 47                    | -----          | 5      | 2                     | -----          | 50     |
| Jan. 28..... | 11.48 a.m. | 35                    | -----          | 17     | 0                     | -----          | 52     |
| Jan. 29..... | 11.48 a.m. | 63                    | 11             | -----  | 12                    | -----          | 40     |
| Jan. 30..... | 11.48 p.m. | 31                    | -----          | 21     | 7                     | -----          | 45     |
| Jan. 31..... | 11.48 a.m. | 32                    | -----          | 20     | 6                     | -----          | 46     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 12.08 p.m. | 53                    | 1              | -----  | 0                     | -----          | 52     |
| Jan. 21..... | 12.08 p.m. | 39                    | -----          | 13     | 4                     | -----          | 48     |
| Jan. 22..... | 12.08 p.m. | 30                    | -----          | 22     | 15                    | -----          | 37     |
| Jan. 23..... | 12.08 p.m. | 50                    | -----          | 2      | 2                     | -----          | 50     |
| Jan. 24..... | 12.08 p.m. | 43                    | -----          | 9      | 5                     | -----          | 47     |
| Jan. 25..... | 12.08 p.m. | 52                    | -----          |        | 7                     | -----          | 45     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 12.08 p.m. | 34                    | -----          | 18     | 4                     | -----          | 48     |
| Jan. 28..... | 12.08 p.m. | 39                    | -----          | 13     | 5                     | -----          | 47     |
| Jan. 29..... | 12.08 p.m. | 31                    | -----          | 21     | 7                     | -----          | 45     |
| Jan. 30..... | 12.08 p.m. | 36                    | -----          | 16     | 9                     | -----          | 43     |
| Jan. 31..... | 12.08 a.m. | 30                    | -----          | 22     | 7                     | -----          | 45     |

## OVERLOADING OF CARS—Continued.

| Date.       | Time.      | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|-------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|             |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan 20..... | 12.28 p.m. | 45                    | -----          | 7      | 5                     | -----          | 47     |
| Jan 21..... | 12.28 p.m. | 39                    | -----          | 13     | 7                     | -----          | 45     |
| Jan 22..... | 12.28 p.m. | 21                    | -----          | 31     | 7                     | -----          | 45     |
| Jan 23..... | 12.28 p.m. | 40                    | -----          | 12     | 5                     | -----          | 47     |
| Jan 24..... | 12.28 p.m. | 40                    | -----          | 12     | 4                     | -----          | 48     |
| Jan 25..... | 12.28 p.m. | 75                    | 23             | -----  | 9                     | -----          | 43     |
| Jan 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan 27..... | 12.28 p.m. | 36                    | -----          | 16     | 14                    | -----          | 38     |
| Jan 28..... | 12.28 p.m. | 44                    | -----          | 8      | 10                    | -----          | 42     |
| Jan 29..... | 12.28 p.m. | 34                    | -----          | 18     | 5                     | -----          | 47     |
| Jan 30..... | 12.28 p.m. | 31                    | -----          | 21     | 11                    | -----          | 41     |
| Jan 31..... | 12.28 p.m. | 47                    | -----          | 5      | 5                     | -----          | 47     |
| Jan 20..... | 12.48 p.m. | 39                    | -----          | 13     | 12                    | -----          | 40     |
| Jan 21..... | 12.48 p.m. | 29                    | -----          | 23     | 20                    | -----          | 32     |
| Jan 22..... | 12.48 p.m. | 40                    | -----          | 12     | 6                     | -----          | 46     |
| Jan 23..... | 12.48 p.m. | 47                    | -----          | 5      | 11                    | -----          | 41     |
| Jan 24..... | 12.48 p.m. | 13                    | -----          | 39     | 12                    | -----          | 40     |
| Jan 25..... | 12.48 p.m. | 51                    | -----          | 1      | 8                     | -----          | 44     |
| Jan 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan 27..... | 12.48 p.m. | 54                    | 2              | -----  | 11                    | -----          | 41     |
| Jan 28..... | 12.48 p.m. | 33                    | -----          | 19     | 6                     | -----          | 46     |
| Jan 29..... | 12.48 p.m. | 30                    | -----          | 22     | 8                     | -----          | 44     |
| Jan 30..... | 12.48 p.m. | 33                    | -----          | 19     | 0                     | -----          | 52     |
| Jan 31..... | 12.48 p.m. | 50                    | -----          | 2      | 5                     | -----          | 47     |
| Jan 20..... | 1.08 p.m.  | 35                    | -----          | 17     | 2                     | -----          | 50     |
| Jan 21..... | 1.08 p.m.  | 46                    | -----          | 6      | 5                     | -----          | 47     |
| Jan 22..... | 1.08 p.m.  | 40                    | -----          | 12     | 12                    | -----          | 40     |
| Jan 23..... | 1.08 p.m.  | 37                    | -----          | 15     | 4                     | -----          | 48     |
| Jan 24..... | 1.08 p.m.  | 30                    | -----          | 22     | 5                     | -----          | 47     |
| Jan 25..... | 1.08 p.m.  | 69                    | 17             | -----  | 4                     | -----          | 48     |
| Jan 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan 27..... | 1.08 p.m.  | 42                    | -----          | 10     | 5                     | -----          | 46     |
| Jan 28..... | 1.08 p.m.  | 64                    | 12             | -----  | 10                    | -----          | 42     |
| Jan 29..... | 1.08 p.m.  | 23                    | -----          | 29     | 7                     | -----          | 45     |
| Jan 30..... | 1.08 p.m.  | 48                    | -----          | 4      | 11                    | -----          | 41     |
| Jan 31..... | 1.08 p.m.  | 58                    | 6              | -----  | 11                    | -----          | 41     |
| Jan 20..... | 1.28 p.m.  | 61                    | 9              | -----  | 11                    | -----          | 41     |
| Jan 21..... | 1.28 p.m.  | 37                    | -----          | 15     | 8                     | -----          | 44     |
| Jan 22..... | 1.28 p.m.  | 50                    | -----          | 2      | 15                    | -----          | 37     |
| Jan 23..... | 1.28 p.m.  | 43                    | -----          | 9      | 32                    | -----          | 20     |
| Jan 24..... | 1.28 p.m.  | 38                    | -----          | 14     | 5                     | -----          | 47     |
| Jan 25..... | 1.28 p.m.  | 70                    | 18             | -----  | 14                    | -----          | 38     |
| Jan 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan 27..... | 1.28 p.m.  | 27                    | -----          | 25     | 10                    | -----          | 42     |
| Jan 28..... | 1.28 p.m.  | 40                    | -----          | 12     | 9                     | -----          | 43     |
| Jan 29..... | 1.28 p.m.  | 44                    | -----          | 8      | 11                    | -----          | 41     |
| Jan 30..... | 1.28 p.m.  | 44                    | -----          | 8      | 15                    | -----          | 37     |
| Jan 31..... | 1.28 p.m.  | 37                    | -----          | 15     | 8                     | -----          | 44     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 1.48 p.m. | 36                    |                | 16     | 14                    |                | 38     |
| Jan. 21..... | 1.48 p.m. | 44                    |                | 8      | 11                    |                | 41     |
| Jan. 22..... | 1.48 p.m. | 53                    | 1              |        | 8                     |                | 44     |
| Jan. 23..... | 1.48 p.m. | 57                    | 5              |        | 14                    |                | 38     |
| Jan. 24..... | 1.48 p.m. | 32                    |                | 20     | 12                    |                | 40     |
| Jan. 25..... | 1.48 p.m. | 48                    |                | 4      | 6                     |                | 46     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 1.48 p.m. | 39                    |                | 13     | 8                     |                | 44     |
| Jan. 28..... | 1.48 p.m. | 31                    |                | 21     | 9                     |                | 43     |
| Jan. 29..... | 1.48 p.m. | 48                    |                | 4      | 9                     |                | 43     |
| Jan. 30..... | 1.48 p.m. | 45                    |                | 7      | 9                     |                | 43     |
| Jan. 31..... | 1.48 p.m. | 29                    |                | 23     | 7                     |                | 45     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 2.08 p.m. | 55                    | 4              |        | 17                    |                | 35     |
| Jan. 21..... | 2.08 p.m. | 32                    |                | 20     | 13                    |                | 39     |
| Jan. 22..... | 2.08 p.m. | 25                    |                | 27     | 6                     |                | 46     |
| Jan. 23..... | 2.08 p.m. | 29                    |                | 23     | 5                     |                | 17     |
| Jan. 24..... | 2.08 p.m. | 38                    |                | 14     | 6                     |                | 46     |
| Jan. 25..... | 2.08 p.m. | 48                    |                | 4      | 8                     |                | 44     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 2.08 p.m. | 43                    |                | 9      | 13                    |                | 39     |
| Jan. 28..... | 2.08 p.m. | 57                    | 5              |        | 8                     |                | 44     |
| Jan. 29..... | 2.08 p.m. | 30                    |                | 22     | 9                     |                | 43     |
| Jan. 30..... | 2.08 p.m. | 44                    |                | 8      | 7                     |                | 45     |
| Jan. 31..... | 2.08 p.m. | 33                    |                | 19     | 11                    |                | 41     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 2.28 p.m. | 46                    |                | 6      | 7                     |                | 45     |
| Jan. 21..... | 2.28 p.m. | 52                    |                |        | 6                     |                | 46     |
| Jan. 22..... | 2.28 p.m. | 50                    |                | 2      | 5                     |                | 47     |
| Jan. 23..... | 2.28 p.m. | 58                    | 6              |        | 9                     |                | 43     |
| Jan. 24..... | 2.28 p.m. | 42                    |                | 10     | 11                    |                | 41     |
| Jan. 25..... | 2.28 p.m. | 56                    | 4              |        | 34                    |                | 18     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 2.28 p.m. | 52                    |                |        | 10                    |                | 42     |
| Jan. 28..... | 2.28 p.m. | 60                    | 8              |        | 13                    |                | 39     |
| Jan. 29..... | 2.28 p.m. | 83                    | 31             |        | 6                     |                | 46     |
| Jan. 30..... | 2.28 p.m. | 43                    |                | 9      | 16                    |                | 36     |
| Jan. 31..... | 2.28 p.m. | 37                    |                | 15     | 6                     |                | 46     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 2.48 p.m. | 32                    |                | 20     | 9                     |                | 43     |
| Jan. 21..... | 2.48 p.m. | 64                    | 12             |        | 10                    |                | 42     |
| Jan. 22..... | 2.48 p.m. | 57                    | 5              |        | 9                     |                | 43     |
| Jan. 23..... | 2.48 p.m. | 61                    | 9              |        | 17                    |                | 35     |
| Jan. 24..... | 2.48 p.m. | 37                    |                | 15     | 7                     |                | 45     |
| Jan. 25..... | 2.48 p.m. | 58                    | 6              |        | 20                    |                | 32     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 2.48 p.m. | 38                    |                | 14     | 7                     |                | 45     |
| Jan. 28..... | 2.48 p.m. | 12                    |                | 40     | 14                    |                | 38     |
| Jan. 29..... | 2.48 p.m. | 52                    |                |        | 5                     |                | 47     |
| Jan. 30..... | 2.48 p.m. | 46                    |                | 6      | 9                     |                | 43     |
| Jan. 31..... | 2.48 p.m. | 45                    |                | 7      | 10                    |                | 42     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 3.08 p.m. | 70                    | 18             | -----  | 10                    | -----          | 42     |
| Jan. 21..... | 3.08 p.m. | 49                    | -----          | 3      | 21                    | -----          | 31     |
| Jan. 22..... | 3.08 p.m. | 58                    | 6              | -----  | 7                     | -----          | 45     |
| Jan. 23..... | 3.08 p.m. | 51                    | -----          | 1      | 12                    | -----          | 1      |
| Jan. 24..... | 3.08 p.m. | 35                    | -----          | 17     | 8                     | -----          | 44     |
| Jan. 25..... | 3.08 p.m. | 34                    | -----          | 18     | 7                     | -----          | 45     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 3.08 p.m. | 48                    | -----          | 4      | 12                    | -----          | 40     |
| Jan. 28..... | 3.08 p.m. | 69                    | 17             | -----  | 8                     | -----          | 44     |
| Jan. 29..... | 3.08 p.m. | 52                    | -----          |        | 11                    | -----          | 41     |
| Jan. 30..... | 3.08 p.m. | 29                    | -----          | 23     | 4                     | -----          | 48     |
| Jan. 31..... | 3.08 p.m. | 46                    | -----          | 6      | 8                     | -----          | 44     |
| Jan. 20..... | 3.28 p.m. | 47                    | -----          | 5      | 10                    | -----          | 42     |
| Jan. 21..... | 3.28 p.m. | 48                    | -----          | 4      | 8                     | -----          | 44     |
| Jan. 22..... | 3.28 p.m. | 68                    | 16             | -----  | 20                    | -----          | 32     |
| Jan. 23..... | 3.28 p.m. | 47                    | -----          | 5      | 4                     | -----          | 48     |
| Jan. 24..... | 3.28 p.m. | 28                    | -----          | 24     | 3                     | -----          | 49     |
| Jan. 25..... | 3.28 p.m. | 23                    | -----          | 29     | 8                     | -----          | 44     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 3.28 p.m. | 47                    | -----          | 5      | 9                     | -----          | 43     |
| Jan. 28..... | 3.28 p.m. | 33                    | -----          | 19     | 14                    | -----          | 38     |
| Jan. 29..... | 3.28 p.m. | 48                    | -----          | 4      | 8                     | -----          | 44     |
| Jan. 30..... | 3.28 p.m. | 37                    | -----          | 15     | 3                     | -----          | 49     |
| Jan. 31..... | 3.28 p.m. | 37                    | -----          | 15     | 3                     | -----          | 49     |
| Jan. 20..... | 3.46 p.m. | 60                    | 8              | -----  | 7                     | -----          | 45     |
| Jan. 21..... | 3.46 p.m. | 43                    | -----          | 9      | 13                    | -----          | 39     |
| Jan. 22..... | 3.46 p.m. | 38                    | -----          | 14     | 16                    | -----          | 36     |
| Jan. 23..... | 3.46 p.m. | 43                    | -----          | 9      | 11                    | -----          | 41     |
| Jan. 24..... | 3.46 p.m. | 40                    | -----          | 12     | 4                     | -----          | 48     |
| Jan. 25..... | 3.46 p.m. | 76                    | 24             | -----  | 19                    | -----          | 33     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 3.46 p.m. | 47                    | -----          | 5      | 9                     | -----          | 43     |
| Jan. 28..... | 3.46 p.m. | 33                    | -----          | 19     | 6                     | -----          | 46     |
| Jan. 29..... | 3.46 p.m. | 28                    | -----          | 24     | 15                    | -----          | 37     |
| Jan. 30..... | 3.46 p.m. | 33                    | -----          | 19     | 7                     | -----          | 45     |
| Jan. 31..... | 3.46 p.m. | 38                    | -----          | 14     | 13                    | -----          | 39     |
| Jan. 20..... | 4.06 p.m. | 63                    | 11             | -----  | 8                     | -----          | 44     |
| Jan. 21..... | 4.06 p.m. | 70                    | 18             | -----  | 20                    | -----          | 32     |
| Jan. 22..... | 4.06 p.m. | 25                    | -----          | 27     | 9                     | -----          | 43     |
| Jan. 23..... | 4.06 p.m. | 75                    | 23             | -----  | 13                    | -----          | 39     |
| Jan. 24..... | 4.06 p.m. | 96                    | 44             | -----  | 12                    | -----          | 40     |
| Jan. 25..... | 4.06 p.m. | 36                    | -----          | 16     | 9                     | -----          | 43     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 4.06 p.m. | 49                    | 7              | -----  | 19                    | -----          | 33     |
| Jan. 28..... | 4.06 p.m. | 40                    | -----          | 12     | 14                    | -----          | 38     |
| Jan. 29..... | 4.06 p.m. | 32                    | -----          | 20     | 15                    | -----          | 37     |
| Jan. 30..... | 4.06 p.m. | 62                    | 10             | -----  | 20                    | -----          | 32     |
| Jan. 31..... | 4.06 p.m. | 33                    | -----          | 19     | 11                    | -----          | 41     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 4.26 p.m. | 80                    | 28             | -----  | 24                    | -----          | 28     |
| Jan. 21..... | 4.26 p.m. | 73                    | 21             | -----  | 18                    | -----          | 34     |
| Jan. 22..... | 4.26 p.m. | 41                    | -----          | 11     | 18                    | -----          | 34     |
| Jan. 23..... | 4.26 p.m. | 42                    | -----          | 10     | 17                    | -----          | 35     |
| Jan. 24..... | 4.26 p.m. | 89                    | 37             | -----  | 24                    | -----          | 28     |
| Jan. 25..... | 4.26 p.m. | 46                    | -----          | 6      | 49                    | -----          | 3      |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 4.26 p.m. | 70                    | 18             | -----  | 31                    | -----          | 21     |
| Jan. 28..... | 4.26 p.m. | 39                    | -----          | 13     | 13                    | -----          | 39     |
| Jan. 29..... | 4.26 p.m. | 25                    | -----          | 27     | 10                    | -----          | 42     |
| Jan. 30..... | 4.26 p.m. | 69                    | 17             | -----  | 6                     | -----          | 46     |
| Jan. 31..... | 4.26 p.m. | 54                    | 2              | -----  | 25                    | -----          | 27     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 4.46 p.m. | 95                    | 33             | -----  | 50                    | -----          | 2      |
| Jan. 21..... | 4.46 p.m. | 64                    | 12             | -----  | 5                     | -----          | 47     |
| Jan. 22..... | 4.46 p.m. | 71                    | 19             | -----  | 11                    | -----          | 41     |
| Jan. 23..... | 4.46 p.m. | 51                    | -----          | 1      | 54                    | 2              | -----  |
| Jan. 24..... | 4.46 p.m. | 50                    | -----          | 2      | 36                    | -----          | 16     |
| Jan. 25..... | 4.46 p.m. | 68                    | 16             | -----  | 16                    | -----          | 36     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 4.46 p.m. | 81                    | 29             | -----  | 10                    | -----          | 42     |
| Jan. 28..... | 4.46 p.m. | 45                    | -----          | 7      | 11                    | -----          | 41     |
| Jan. 29..... | 4.46 p.m. | 71                    | 19             | -----  | 8                     | -----          | 44     |
| Jan. 30..... | 4.46 p.m. | 59                    | 7              | -----  | 10                    | -----          | 42     |
| Jan. 31..... | 4.46 p.m. | 81                    | 29             | -----  | 6                     | -----          | 46     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 5.06 p.m. | 95                    | 33             | -----  | 26                    | -----          | 26     |
| Jan. 21..... | 5.06 p.m. | 52                    | -----          | -----  | 32                    | -----          | 20     |
| Jan. 22..... | 5.06 p.m. | 37                    | -----          | 15     | 16                    | -----          | 36     |
| Jan. 23..... | 5.06 p.m. | 95                    | 33             | -----  | 30                    | -----          | 22     |
| Jan. 24..... | 5.06 p.m. | 51                    | -----          | 1      | 24                    | -----          | 28     |
| Jan. 25..... | 5.06 p.m. | 60                    | 8              | -----  | 10                    | -----          | 42     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 5.06 p.m. | 85                    | 33             | -----  | 13                    | -----          | 39     |
| Jan. 28..... | 5.06 p.m. | 40                    | -----          | 12     | 10                    | -----          | 33     |
| Jan. 29..... | 5.06 p.m. | 99                    | 47             | -----  | 12                    | -----          | 40     |
| Jan. 30..... | 5.06 p.m. | 80                    | 28             | -----  | 21                    | -----          | 31     |
| Jan. 31..... | 5.06 p.m. | 93                    | 41             | -----  | 16                    | -----          | 36     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 5.26 p.m. | 56                    | 4              | -----  | 7                     | -----          | 45     |
| Jan. 21..... | 5.26 p.m. | 59                    | 7              | -----  | 3                     | -----          | 49     |
| Jan. 22..... | 5.26 p.m. | 126                   | 74             | -----  | 77                    | -----          | 45     |
| Jan. 23..... | 5.26 p.m. | 68                    | 16             | -----  | 2                     | -----          | 50     |
| Jan. 24..... | 5.26 p.m. | 71                    | 19             | -----  | 9                     | -----          | 43     |
| Jan. 25..... | 5.26 p.m. | 78                    | 26             | -----  | 8                     | -----          | 44     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 5.26 p.m. | 61                    | 9              | -----  | 10                    | -----          | 42     |
| Jan. 28..... | 5.26 p.m. | 79                    | 25             | -----  | 5                     | -----          | 47     |
| Jan. 29..... | 5.26 p.m. | 95                    | 33             | -----  | 12                    | -----          | 40     |
| Jan. 30..... | 5.26 p.m. | 48                    | -----          | 4      | 8                     | -----          | 44     |
| Jan. 31..... | 5.26 p.m. | 63                    | 11             | -----  | 4                     | -----          | 48     |

## OVERLOADING OF CARS—Continued.

| Date.         | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|---------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|               |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20.....  | 5.46 p.m. | 56                    | 4              | -----  | 8                     | -----          | 44     |
| Jan. 21.....  | 5.46 p.m. | 52                    | -----          | -----  | 17                    | -----          | 35     |
| Jan. 22.....  | 5.46 p.m. | 75                    | 23             | -----  | 5                     | -----          | 47     |
| Jan. 23.....  | 5.46 p.m. | 55                    | 13             | -----  | 8                     | -----          | 44     |
| Jan. 24.....  | 5.46 p.m. | 63                    | 11             | -----  | 6                     | -----          | 46     |
| Jan. 25.....  | 5.46 p.m. | 53                    | 1              | -----  | 9                     | -----          | 43     |
| Jan. 26.....  | Sunday    | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.....  | 5.46 p.m. | 49                    | -----          | 3      | 3                     | -----          | 49     |
| Jan. 28.....  | 5.46 p.m. | 62                    | 10             | -----  | 7                     | -----          | 45     |
| Jan. 29.....  | 5.46 p.m. | 64                    | 12             | -----  | 20                    | -----          | 32     |
| Jan. 30.....  | 5.46 p.m. | 74                    | 22             | -----  | 3                     | -----          | 49     |
| Jan. 31.....  | 5.46 p.m. | 65                    | 13             | -----  | 6                     | -----          | 46     |
| Jan. 20.....  | 6.06 p.m. | 39                    | -----          | 13     | 10                    | -----          | 42     |
| Jan. 21.....  | 6.06 p.m. | 53                    | 1              | -----  | 10                    | -----          | 42     |
| Jan. 22.....  | 6.06 p.m. | 42                    | -----          | 10     | 6                     | -----          | 46     |
| Jan. 23.....  | 6.06 p.m. | 42                    | -----          | 10     | 17                    | -----          | 35     |
| Jan. 24.....  | 6.06 p.m. | 54                    | 2              | -----  | 9                     | -----          | 43     |
| Jan. 25.....  | 6.06 p.m. | 34                    | -----          | 18     | 17                    | -----          | 35     |
| Jan. 26.....  | Sunday    | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.....  | 6.06 p.m. | 66                    | 14             | -----  | 15                    | -----          | 37     |
| Jan. 28.....  | 6.06 p.m. | 58                    | 6              | -----  | 13                    | -----          | 39     |
| Jan. 29.....  | 6.06 p.m. | 53                    | 1              | -----  | 13                    | -----          | 39     |
| Jan. 30.....  | 6.06 p.m. | 71                    | 19             | -----  | 10                    | -----          | 42     |
| Jan. 31.....  | 6.06 p.m. | 41                    | -----          | 11     | 11                    | -----          | 41     |
| *Jan. 20..... | 6.08 p.m. | 40                    | -----          | 12     | 16                    | -----          | 36     |
| Jan. 21.....  | 6.08 p.m. | 40                    | -----          | 12     | 7                     | -----          | 45     |
| Jan. 22.....  | 6.08 p.m. | 58                    | 6              | -----  | 17                    | -----          | 35     |
| Jan. 23.....  | 6.08 p.m. | 50                    | -----          | 2      | 14                    | -----          | 38     |
| Jan. 24.....  | 6.08 p.m. | 55                    | 3              | -----  | 14                    | -----          | 38     |
| Jan. 25.....  | 6.08 p.m. | 49                    | -----          | 3      | 4                     | -----          | 48     |
| Jan. 26.....  | Sunday    | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.....  | 6.08 p.m. | 14                    | -----          | 38     | 0                     | -----          | 52     |
| Jan. 28.....  | 6.08 p.m. | 43                    | -----          | 9      | 14                    | -----          | 38     |
| Jan. 29.....  | 6.08 p.m. | 36                    | -----          | 16     | 5                     | -----          | 47     |
| Jan. 30.....  | 6.08 p.m. | 62                    | 10             | -----  | 20                    | -----          | 32     |
| Jan. 31.....  | 6.08 p.m. | 59                    | 7              | -----  | 14                    | -----          | 38     |
| Jan. 20.....  | 6.28 p.m. | 47                    | -----          | 5      | 11                    | -----          | 41     |
| Jan. 21.....  | 6.28 p.m. | 27                    | -----          | 25     | 6                     | -----          | 46     |
| Jan. 22.....  | 6.28 p.m. | 28                    | -----          | 24     | 2                     | -----          | 50     |
| Jan. 23.....  | 6.28 p.m. | 46                    | -----          | 6      | 13                    | -----          | 39     |
| Jan. 24.....  | 6.28 p.m. | 37                    | -----          | 15     | 14                    | -----          | 38     |
| Jan. 25.....  | 6.28 p.m. | 72                    | 20             | -----  | 43                    | -----          | 9      |
| Jan. 26.....  | Sunday    | -----                 | -----          | -----  | -----                 | -----          | -----  |
| Jan. 27.....  | 6.28 p.m. | 38                    | -----          | 14     | 9                     | -----          | 43     |
| Jan. 28.....  | 6.28 p.m. | 51                    | -----          | 1      | 7                     | -----          | 45     |
| Jan. 29.....  | 6.28 p.m. | 31                    | -----          | 21     | 9                     | -----          | 43     |
| Jan. 30.....  | 6.28 p.m. | 49                    | -----          | 3      | 10                    | -----          | 42     |
| Jan. 31.....  | 6.28 p.m. | 26                    | -----          | 26     | 9                     | -----          | 43     |

\*Extra.

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 7.08 p.m. | 18                    |                | 34     | 6                     |                | 46     |
| Jan. 21..... | 7.08 p.m. | 19                    |                | 33     | 1                     |                | 51     |
| Jan. 22..... | 7.08 p.m. | 23                    |                | 29     | 12                    |                | 40     |
| Jan. 23..... | 7.08 p.m. | 24                    |                | 28     | 5                     |                | 47     |
| Jan. 24..... | 7.08 p.m. | 50                    |                | 2      | 5                     |                | 47     |
| Jan. 25..... | 7.08 p.m. | 57                    | 5              |        | 10                    |                | 42     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.08 p.m. | 28                    |                | 24     | 3                     |                | 49     |
| Jan. 28..... | 7.08 p.m. | 20                    |                | 32     | 1                     |                | 51     |
| Jan. 29..... | 7.08 p.m. | 17                    |                | 35     | 5                     |                | 47     |
| Jan. 30..... | 7.08 p.m. | 25                    |                | 27     | 1                     |                | 51     |
| Jan. 31..... | 7.08 p.m. | 31                    |                | 21     | 7                     |                | 45     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 7.28 p.m. | 15                    |                | 37     | 11                    |                | 41     |
| Jan. 21..... | 7.28 p.m. | 52                    |                |        | 8                     |                | 44     |
| Jan. 22..... | 7.28 p.m. | 22                    |                | 30     | 8                     |                | 44     |
| Jan. 23..... | 7.28 p.m. | 14                    |                | 38     | 2                     |                | 50     |
| Jan. 24..... | 7.28 p.m. | 40                    |                | 12     | 10                    |                | 42     |
| Jan. 25..... | 7.28 p.m. | 21                    |                | 31     | 10                    |                | 42     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.28 p.m. | 31                    |                | 21     | 3                     |                | 49     |
| Jan. 28..... | 7.28 p.m. | 39                    |                | 13     | 5                     |                | 47     |
| Jan. 29..... | 7.28 p.m. | 24                    |                | 28     | 4                     |                | 48     |
| Jan. 30..... | 7.28 p.m. | 34                    |                | 18     | 5                     |                | 47     |
| Jan. 31..... | 7.28 p.m. | 43                    |                | 9      | 3                     |                | 49     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 7.48 p.m. | 16                    |                | 36     | 2                     |                | 50     |
| Jan. 21..... | 7.48 p.m. | 61                    | 9              |        | 2                     |                | 50     |
| Jan. 22..... | 7.48 p.m. | 8                     |                | 44     | 3                     |                | 49     |
| Jan. 23..... | 7.48 p.m. | 34                    |                | 18     | 2                     |                | 50     |
| Jan. 24..... | 7.48 p.m. | 34                    |                | 18     | 1                     |                | 51     |
| Jan. 25..... | 7.48 p.m. | 29                    |                | 23     | 3                     |                | 49     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.48 p.m. | 36                    |                | 19     | 6                     |                | 46     |
| Jan. 28..... | 7.48 p.m. | 40                    |                | 12     | 6                     |                | 46     |
| Jan. 29..... | 7.48 p.m. | 20                    |                | 32     | 11                    |                | 41     |
| Jan. 30..... | 7.48 p.m. | 39                    |                | 13     | 4                     |                | 48     |
| Jan. 31..... | 7.48 p.m. | 45                    |                | 7      | 2                     |                | 50     |
|              |           |                       |                |        |                       |                |        |
| Jan. 20..... | 8.08 p.m. | 26                    |                | 26     | 3                     |                | 49     |
| Jan. 21..... | 8.08 p.m. | 39                    |                | 13     | 3                     |                | 49     |
| Jan. 22..... | 8.08 p.m. | 20                    |                | 32     | 10                    |                | 42     |
| Jan. 23..... | 8.08 p.m. | 28                    |                | 24     | 3                     |                | 49     |
| Jan. 24..... | 8.08 p.m. | 32                    |                | 20     | 3                     |                | 49     |
| Jan. 25..... | 8.08 p.m. | 31                    |                | 21     | 7                     |                | 45     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.08 p.m. | 26                    |                | 26     | 3                     |                | 49     |
| Jan. 28..... | 8.08 p.m. | 28                    |                | 24     | 4                     |                | 48     |
| Jan. 29..... | 8.08 p.m. | 10                    |                | 42     | 2                     |                | 50     |
| Jan. 30..... | 8.08 p.m. | 31                    |                | 21     | 1                     |                | 51     |
| Jan. 31..... | 8.08 p.m. | 35                    |                | 17     | 5                     |                | 47     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 8.28 p.m. | 22                    |                | 30     | 5                     |                | 47     |
| Jan. 21..... | 8.28 p.m. | 19                    |                | 33     | 0                     |                | 52     |
| Jan. 22..... | 8.28 p.m. | 21                    |                | 31     | 5                     |                | 47     |
| Jan. 23..... | 8.28 p.m. | 17                    |                | 35     | 12                    |                | 40     |
| Jan. 24..... | 8.28 p.m. | 14                    |                | 38     | 3                     |                | 49     |
| Jan. 25..... | 8.28 p.m. | 40                    |                | 12     | 12                    |                | 40     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.28 p.m. | 8                     |                | 44     | 5                     |                | 47     |
| Jan. 28..... | 8.28 p.m. | 11                    |                | 41     | 1                     |                | 51     |
| Jan. 29..... | 8.28 p.m. | 32                    |                | 20     | 2                     |                | 50     |
| Jan. 30..... | 8.28 p.m. | 24                    |                | 28     | 1                     |                | 51     |
| Jan. 31..... | 8.28 p.m. | 23                    |                | 29     | 1                     |                | 51     |
| Jan. 20..... | 8.48 p.m. | 22                    |                | 30     | 5                     |                | 47     |
| Jan. 21..... | 8.48 p.m. | 19                    |                | 33     | 0                     |                | 53     |
| Jan. 22..... | 8.48 p.m. | 41                    |                | 11     | 4                     |                | 48     |
| Jan. 23..... | 8.48 p.m. | 18                    |                | 34     | 0                     |                | 52     |
| Jan. 24..... | 8.48 p.m. | 58                    | 6              |        | 3                     |                | 49     |
| Jan. 25..... | 8.48 p.m. | 46                    |                | 6      | 9                     |                | 43     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.48 p.m. | 19                    |                | 33     | 4                     |                | 48     |
| Jan. 28..... | 8.48 p.m. | 27                    |                | 25     | 9                     |                | 43     |
| Jan. 29..... | 8.48 p.m. | 23                    |                | 29     | 7                     |                | 45     |
| Jan. 30..... | 8.48 p.m. | 28                    |                | 24     | 6                     |                | 46     |
| Jan. 31..... | 8.48 p.m. | 34                    |                | 18     | 3                     |                | 49     |
| Jan. 20..... | 9.02 p.m. | 18                    |                | 34     | 4                     |                | 48     |
| Jan. 21..... | 9.02 p.m. | 9                     |                | 43     | 6                     |                | 46     |
| Jan. 22..... | 9.02 p.m. | 49                    |                | 3      | 5                     |                | 47     |
| Jan. 23..... | 9.02 p.m. | 45                    |                | 7      | 4                     |                | 48     |
| Jan. 24..... | 9.02 p.m. | 40                    |                | 12     | 0                     |                | 52     |
| Jan. 25..... | 9.02 p.m. | 49                    |                | 3      | 4                     |                | 48     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 9.02 p.m. | 54                    | 2              |        | 3                     |                | 49     |
| Jan. 28..... | 9.02 p.m. | 65                    | 13             |        | 10                    |                | 42     |
| Jan. 29..... | 9.02 p.m. | 30                    |                | 22     | 2                     |                | 50     |
| Jan. 30..... | 9.02 p.m. | 40                    |                | 12     | 1                     |                | 51     |
| Jan. 31..... | 9.02 p.m. | 54                    | 2              |        | 0                     |                | 52     |
| Jan. 20..... | 9.28 p.m. | 41                    |                | 11     | 5                     |                | 47     |
| Jan. 21..... | 9.28 p.m. | 25                    |                | 27     | 2                     |                | 50     |
| Jan. 22..... | 9.28 p.m. | 32                    |                | 20     | 5                     |                | 47     |
| Jan. 23..... | 9.28 p.m. | 28                    |                | 24     | 5                     |                | 47     |
| Jan. 24..... | 9.28 p.m. | 48                    |                | 4      | 8                     |                | 44     |
| Jan. 25..... | 9.28 p.m. | 39                    |                | 13     | 7                     |                | 45     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 9.28 p.m. | 31                    |                | 21     | 2                     |                | 50     |
| Jan. 28..... | 9.28 p.m. | 35                    |                | 17     | 4                     |                | 48     |
| Jan. 29..... | 9.28 p.m. | 27                    |                | 25     | 4                     |                | 48     |
| Jan. 30..... | 9.28 p.m. | 25                    |                | 27     | 6                     |                | 46     |



## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 9.48 p.m.  | 35                    | -----          | 17     | 5                     | -----          | 47     |
| Jan. 21..... | 9.48 p.m.  | 34                    | -----          | 18     | 6                     | -----          | 46     |
| Jan. 22..... | 9.48 p.m.  | 29                    | -----          | 23     | 4                     | -----          | 48     |
| Jan. 23..... | 9.48 p.m.  | 29                    | -----          | 23     | 2                     | -----          | 50     |
| Jan. 24..... | 9.48 p.m.  | 23                    | -----          | 29     | 4                     | -----          | 48     |
| Jan. 25..... | 9.48 p.m.  | 18                    | -----          | 34     | 3                     | -----          | 49     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 9.48 p.m.  | 29                    | -----          | 23     | 4                     | -----          | 48     |
| Jan. 28..... | 9.48 p.m.  | 47                    | -----          | 5      | 3                     | -----          | 49     |
| Jan. 29..... | 9.48 p.m.  | 50                    | -----          | 2      | 6                     | -----          | 46     |
| Jan. 30..... | 9.48 p.m.  | 35                    | -----          | 17     | 5                     | -----          | 47     |
| Jan. 31..... | 9.48 p.m.  | 51                    | -----          | 1      | 8                     | -----          | 44     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 10.08 p.m. | 45                    | -----          | 7      | 4                     | -----          | 48     |
| Jan. 21..... | 10.08 p.m. | 27                    | -----          | 25     | 5                     | -----          | 47     |
| Jan. 22..... | 10.08 p.m. | 28                    | -----          | 24     | 1                     | -----          | 51     |
| Jan. 23..... | 10.08 p.m. | 35                    | -----          | 17     | 5                     | -----          | 47     |
| Jan. 24..... | 10.08 p.m. | 35                    | -----          | 17     | 4                     | -----          | 48     |
| Jan. 25..... | 10.08 p.m. | 57                    | 5              | -----  | 10                    | -----          | 42     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.08 p.m. | 35                    | -----          | 17     | 7                     | -----          | 45     |
| Jan. 28..... | 10.08 p.m. | 41                    | -----          | 11     | 1                     | -----          | 51     |
| Jan. 29..... | 10.08 p.m. | 43                    | -----          | 9      | 0                     | -----          | 52     |
| Jan. 30..... | 10.08 p.m. | 43                    | -----          | 9      | 3                     | -----          | 49     |
| Jan. 31..... | 10.08 p.m. | 59                    | 7              | -----  | 3                     | -----          | 49     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 10.28 p.m. | 28                    | -----          | 24     | 31                    | -----          | 21     |
| Jan. 21..... | 10.28 p.m. | 39                    | -----          | 13     | 2                     | -----          | 50     |
| Jan. 22..... | 10.28 p.m. | 56                    | 4              | -----  | 8                     | -----          | 44     |
| Jan. 23..... | 10.28 p.m. | 51                    | -----          | 1      | 3                     | -----          | 49     |
| Jan. 24..... | 10.28 p.m. | 54                    | 2              | -----  | 3                     | -----          | 49     |
| Jan. 25..... | 10.28 p.m. | 32                    | -----          | 20     | 17                    | -----          | 35     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.28 p.m. | 40                    | -----          | 12     | 10                    | -----          | 42     |
| Jan. 28..... | 10.28 p.m. | 43                    | -----          | 9      | 2                     | -----          | 50     |
| Jan. 29..... | 10.28 p.m. | 64                    | 12             | -----  | 2                     | -----          | 50     |
| Jan. 30..... | 10.28 p.m. | 62                    | 10             | -----  | 6                     | -----          | 46     |
| Jan. 31..... | 10.28 p.m. | 56                    | 4              | -----  | 4                     | -----          | 48     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 10.48 p.m. | 28                    | -----          | 24     | 1                     | -----          | 51     |
| Jan. 21..... | 10.48 p.m. | 71                    | 19             | -----  | 3                     | -----          | 49     |
| Jan. 22..... | 10.48 p.m. | 38                    | -----          | 14     | 0                     | -----          | 52     |
| Jan. 23..... | 10.48 p.m. | 42                    | -----          | 10     | 0                     | -----          | 52     |
| Jan. 24..... | 10.48 p.m. | 44                    | -----          | 8      | 13                    | -----          | 39     |
| Jan. 25..... | 10.48 p.m. | 21                    | -----          | 31     | 3                     | -----          | 49     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.48 p.m. | 65                    | 13             | 13     | 8                     | -----          | 44     |
| Jan. 28..... | 10.48 p.m. | 66                    | 14             | -----  | 1                     | -----          | 51     |
| Jan. 29..... | 10.48 p.m. | 35                    | -----          | 17     | 4                     | -----          | 48     |
| Jan. 30..... | 10.48 p.m. | 70                    | 18             | -----  | 3                     | -----          | 49     |
| Jan. 31..... | 10.48 p.m. | 82                    | 30             | -----  | 3                     | -----          | 49     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 11.08 p.m. | 43                    | -----          | 9      | 4                     | -----          | 48     |
| Jan. 21..... | 11.08 p.m. | 40                    | -----          | 12     | 0                     | -----          | 52     |
| Jan. 22..... | 11.08 p.m. | 54                    | 2              | -----  | 4                     | -----          | 48     |
| Jan. 23..... | 11.08 p.m. | 54                    | 2              | -----  | 6                     | -----          | 46     |
| Jan. 24..... | 11.08 p.m. | 43                    | -----          | 9      | 0                     | -----          | 52     |
| Jan. 25..... | 11.08 p.m. | 49                    | -----          | 3      | 5                     | -----          | 47     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.08 p.m. | 54                    | 2              | -----  | 6                     | -----          | 46     |
| Jan. 28..... | 11.08 p.m. | 45                    | -----          | 7      | 0                     | -----          | 52     |
| Jan. 29..... | 11.08 p.m. | 33                    | -----          | 19     | 0                     | -----          | 54     |
| Jan. 30..... | 11.08 p.m. | 40                    | -----          | 12     | 3                     | -----          | 49     |
| Jan. 31..... | 11.08 p.m. | 56                    | 4              | -----  | 3                     | -----          | 49     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 11.28 p.m. | 90                    | 38             | -----  | 20                    | -----          | 32     |
| Jan. 21..... | 11.28 p.m. | 44                    | -----          | 8      | 5                     | -----          | 47     |
| Jan. 22..... | 11.28 p.m. | 38                    | -----          | 14     | 17                    | -----          | 35     |
| Jan. 23..... | 11.28 p.m. | 50                    | -----          | 2      | 4                     | -----          | 48     |
| Jan. 24..... | 11.28 p.m. | 50                    | -----          | 2      | 6                     | -----          | 46     |
| Jan. 25..... | 11.28 p.m. | 48                    | -----          | 4      | 11                    | -----          | 41     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.28 p.m. | 31                    | -----          | 21     | 4                     | -----          | 48     |
| Jan. 28..... | 11.28 p.m. | 36                    | -----          | 16     | 1                     | -----          | 51     |
| Jan. 29..... | 11.28 p.m. | 24                    | -----          | 28     | 3                     | -----          | 49     |
| Jan. 30..... | 11.28 p.m. | 47                    | -----          | 5      | 2                     | -----          | 50     |
| Jan. 31..... | 11.28 p.m. | 44                    | -----          | 8      | 2                     | -----          | 50     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 11.48 p.m. | 28                    | -----          | 24     | 1                     | -----          | 51     |
| Jan. 21..... | 11.48 p.m. | 29                    | -----          | 23     | 8                     | -----          | 44     |
| Jan. 22..... | 11.48 p.m. | 40                    | -----          | 12     | 1                     | -----          | 51     |
| Jan. 23..... | 11.48 p.m. | 50                    | -----          | 2      | 2                     | -----          | 50     |
| Jan. 24..... | 11.48 p.m. | 62                    | 10             | -----  | 4                     | -----          | 48     |
| Jan. 25..... | 11.48 p.m. | 58                    | 6              | -----  | 9                     | -----          | 43     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.48 p.m. | 19                    | -----          | 33     | 5                     | -----          | 47     |
| Jan. 28..... | 11.48 p.m. | 33                    | -----          | 19     | 4                     | -----          | 48     |
| Jan. 29..... | 11.48 p.m. | 50                    | -----          | 2      | 2                     | -----          | 50     |
| Jan. 30..... | 11.48 p.m. | 23                    | -----          | 29     | 7                     | -----          | 45     |
| Jan. 31..... | 11.48 p.m. | 51                    | -----          | 1      | 3                     | -----          | 49     |
|              |            |                       |                |        |                       |                |        |
| Jan. 20..... | 12.08 p.m. | 10                    | -----          | 42     | 5                     | -----          | 47     |
| Jan. 21..... | 12.08 p.m. | 22                    | -----          | 30     | 1                     | -----          | 50     |
| Jan. 22..... | 12.08 p.m. | 34                    | -----          | 18     | 4                     | -----          | 48     |
| Jan. 23..... | 12.08 p.m. | 20                    | -----          | 32     | 1                     | -----          | 51     |
| Jan. 24..... | 12.08 p.m. | 23                    | -----          | 29     | 1                     | -----          | 51     |
| Jan. 25..... | 12.08 p.m. | 37                    | -----          | 15     | 7                     | -----          | 35     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 12.08 p.m. | 13                    | -----          | 39     | 3                     | -----          | 49     |
| Jan. 28..... | 12.08 p.m. | 46                    | -----          | 6      | 0                     | -----          | 52     |
| Jan. 29..... | 12.08 p.m. | 25                    | -----          | 27     | 0                     | -----          | 52     |
| Jan. 30..... | 12.08 p.m. | 16                    | -----          | 36     | 0                     | -----          | 52     |
| Jan. 31..... | 12.08 p.m. | 32                    | -----          | 20     | 1                     | -----          | 52     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland First Avenue. |                |        | Oakland East Limited. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 12.28 p.m. | 6                     | -----          | 46     | 0                     | -----          | 52     |
| Jan. 21..... | 12.28 p.m. | 40                    | -----          | 12     | 0                     | -----          | 52     |
| Jan. 22..... | 12.28 p.m. | 21                    | -----          | 31     | 11                    | -----          | 41     |
| Jan. 23..... | 12.28 p.m. | 28                    | -----          | 24     | 17                    | -----          | 35     |
| Jan. 24..... | 12.28 p.m. | 18                    | -----          | 34     | 6                     | -----          | 46     |
| Jan. 25..... | 12.28 p.m. | 39                    | -----          | 13     | 15                    | -----          | 37     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 12.28 p.m. | 21                    | -----          | 31     | 2                     | -----          | 50     |
| Jan. 28..... | 12.28 p.m. | No record.            |                |        |                       |                |        |
| Jan. 29..... | 12.28 p.m. | 19                    | -----          | 33     | 0                     | -----          | 52     |
| Jan. 30..... | 12.28 p.m. | 14                    | -----          | 38     | 1                     | -----          | 51     |
| Jan. 31..... | 12.28 p.m. | 12                    | -----          | 40     | 1                     | -----          | 51     |
| Jan. 22..... | 12.48 p.m. | 20                    | -----          | 32     |                       | -----          |        |
| Jan. 28..... | 12.48 p.m. | 14                    | -----          | 38     | 2                     | -----          | 50     |
| Jan. 30..... | 12.48 p.m. | 16                    | -----          | 36     | 0                     | -----          | 52     |
| Jan. 31..... | 12.48 p.m. | 16                    | -----          | 36     | 0                     | -----          | 52     |

## San Leandro Service, West Bound.

| Date.        | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 5.02 a.m. | 5                     | -----          | 47     | 33                    | -----          | 19     |
| Jan. 21..... | 5.02 a.m. | 3                     | -----          | 49     | 29                    | -----          | 23     |
| Jan. 24..... | 5.02 a.m. | 3                     | -----          | 49     | 30                    | -----          | 22     |
| Jan. 25..... | 5.02 a.m. | 8                     | -----          | 44     | 10                    | -----          | 42     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 5.02 a.m. | 6                     | -----          | 46     | 35                    | -----          | 17     |
| Jan. 28..... | 5.02 a.m. | 5                     | -----          | 47     | 14                    | -----          | 38     |
| Jan. 29..... | 5.02 a.m. | 2                     | -----          | 50     | 3                     | -----          | 49     |
| Jan. 30..... | 5.02 a.m. | 4                     | -----          | 48     | 23                    | -----          | 29     |
| Jan. 31..... | 5.02 a.m. | 5                     | -----          | 47     | 7                     | -----          | 45     |
| Jan. 22..... | 5.22 a.m. | 8                     | -----          | 44     | 12                    | -----          | 40     |
| Jan. 23..... | 5.22 a.m. | 6                     | -----          | 46     | 25                    | -----          | 27     |
| Jan. 24..... | 5.22 a.m. | 8                     | -----          | 44     | 36                    | -----          | 16     |
| Jan. 25..... | 5.22 a.m. | 5                     | -----          | 47     | 30                    | -----          | 22     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 5.22 a.m. | 10                    | -----          | 42     | 37                    | -----          | 15     |
| Jan. 28..... | 5.22 a.m. | 6                     | -----          | 46     | 13                    | -----          | 39     |
| Jan. 29..... | 5.22 a.m. | 6                     | -----          | 46     | 21                    | -----          | 31     |
| Jan. 30..... | 5.22 a.m. | 4                     | -----          | 48     | 11                    | -----          | 41     |
| Jan. 31..... | 5.22 a.m. | 4                     | -----          | 48     | 27                    | -----          | 25     |
| Jan. 22..... | 5.42 a.m. | 10                    | -----          | 42     | 57                    | 5              | -----  |
| Jan. 23..... | 5.42 a.m. | 4                     | -----          | 48     | 48                    |                | 4      |
| Jan. 24..... | 5.42 a.m. | 3                     | -----          | 49     | 46                    |                | 6      |
| Jan. 25..... | 5.42 a.m. | 2                     | -----          | 50     | 48                    |                | 4      |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 5.42 a.m. | 3                     | -----          | 49     | 24                    | -----          | 28     |
| Jan. 28..... | 5.42 a.m. | 8                     | -----          | 44     | 19                    | -----          | 33     |
| Jan. 29..... | 5.42 a.m. | 6                     | -----          | 46     | 18                    | -----          | 34     |
| Jan. 30..... | 5.42 a.m. | 8                     | -----          | 44     | 21                    | -----          | 31     |
| Jan. 31..... | 5.42 a.m. | 7                     | -----          | 45     | 46                    | -----          | 6      |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 20..... | 6.17 a.m. | 4                     | -----          | 48     | 56                    | 4              | -----  |
| Jan. 21..... | 6.17 a.m. | 8                     | -----          | 44     | 33                    | -----          | 19     |
| Jan. 24..... | 6.17 a.m. | 5                     | -----          | 47     | 31                    | -----          | 21     |
| Jan. 25..... | 6.17 a.m. | 15                    | -----          | 37     | 99                    | 47             | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.17 a.m. | 6                     | -----          | 46     | 35                    | -----          | 17     |
| Jan. 28..... | 6.17 a.m. | 8                     | -----          | 44     | 49                    | -----          | 3      |
| Jan. 29..... | 6.17 a.m. | 13                    | -----          | 39     | 65                    | 13             | -----  |
| Jan. 30..... | 6.17 a.m. | 13                    | -----          | 39     | 96                    | 44             | -----  |
| Jan. 31..... | 6.17 a.m. | 2                     | -----          | 50     | 37                    | -----          | 15     |
| Jan. 22..... | 6.37 a.m. | 10                    | -----          | 42     | 77                    | 25             | -----  |
| Jan. 23..... | 6.37 a.m. | 12                    | -----          | 40     | 52                    | -----          | -----  |
| Jan. 24..... | 6.37 a.m. | 7                     | -----          | 45     | 56                    | 4              | -----  |
| Jan. 25..... | 6.37 a.m. | 7                     | -----          | 45     | 61                    | 9              | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.37 a.m. | 29                    | -----          | 23     | 37                    | -----          | 15     |
| Jan. 28..... | 6.37 a.m. | 0                     | -----          | 52     | 77                    | 25             | -----  |
| Jan. 29..... | 6.37 a.m. | 4                     | -----          | 48     | 43                    | -----          | 9      |
| Jan. 30..... | 6.37 a.m. | 9                     | -----          | 43     | 58                    | 6              | -----  |
| Jan. 31..... | 6.37 a.m. | 8                     | -----          | 44     | 57                    | 5              | -----  |
| Jan. 22..... | 6.57 a.m. | 7                     | -----          | 45     | 34                    | -----          | 18     |
| Jan. 23..... | 6.57 a.m. | 10                    | -----          | 42     | 94                    | 42             | -----  |
| Jan. 24..... | 6.57 a.m. | 11                    | -----          | 41     | 66                    | 14             | -----  |
| Jan. 25..... | 6.57 a.m. | 8                     | -----          | 44     | 46                    | -----          | 6      |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.57 a.m. | 5                     | -----          | 47     | 94                    | 42             | -----  |
| Jan. 28..... | 6.57 a.m. | 13                    | -----          | 39     | 10                    | -----          | 42     |
| Jan. 29..... | 6.57 a.m. | 11                    | -----          | 41     | 39                    | -----          | 13     |
| Jan. 30..... | 6.57 a.m. | 5                     | -----          | 47     | 38                    | -----          | 14     |
| Jan. 31..... | 6.57 a.m. | 11                    | -----          | 41     | 24                    | -----          | 28     |
| Jan. 22..... | 7.13 a.m. | 10                    | -----          | 42     | 64                    | 12             | -----  |
| Jan. 23..... | 7.13 a.m. | 20                    | -----          | 32     | 30                    | -----          | 22     |
| Jan. 24..... | 7.13 a.m. | 0                     | -----          | 52     | 30                    | -----          | 22     |
| Jan. 25..... | 7.13 a.m. | 10                    | -----          | 42     | 22                    | -----          | 30     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.13 a.m. | 11                    | -----          | 41     | 33                    | -----          | 19     |
| Jan. 28..... | 7.13 a.m. | 8                     | -----          | 44     | 56                    | 4              | -----  |
| Jan. 29..... | 7.13 a.m. | 8                     | -----          | 41     | 61                    | 9              | -----  |
| Jan. 30..... | 7.13 a.m. | 10                    | -----          | 42     | 20                    | -----          | 32     |
| Jan. 31..... | 7.13 a.m. | 7                     | -----          | 45     | 70                    | 28             | -----  |
| Jan. 22..... | 7.37 a.m. | 19                    | -----          | 33     | 61                    | 9              | -----  |
| Jan. 23..... | 7.37 a.m. | 15                    | -----          | 37     | 39                    | -----          | 13     |
| Jan. 24..... | 7.37 a.m. | 8                     | -----          | 44     | 30                    | -----          | 22     |
| Jan. 25..... | 7.37 a.m. | 9                     | -----          | 43     | 52                    | -----          | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.37 a.m. | 10                    | -----          | 42     | 49                    | -----          | 3      |
| Jan. 28..... | 7.37 a.m. | 7                     | -----          | 45     | 26                    | -----          | 26     |
| Jan. 29..... | 7.37 a.m. | 5                     | -----          | 47     | 26                    | -----          | 26     |
| Jan. 30..... | 7.37 a.m. | 10                    | -----          | 42     | 42                    | -----          | 10     |
| Jan. 31..... | 7.37 a.m. | 9                     | -----          | 43     | 64                    | 12             | -----  |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 8.02 a.m. | 26                    | -----          | 26     | 78                    | 26             | -----  |
| Jan. 23..... | 8.02 a.m. | 27                    | -----          | 25     | 103                   | 51             | -----  |
| Jan. 24..... | 8.02 a.m. | 25                    | -----          | 27     | 60                    | 8              | -----  |
| Jan. 25..... | 8.02 a.m. | 18                    | -----          | 34     | 56                    | 4              | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.02 a.m. | 31                    | -----          | 21     | 92                    | 40             | -----  |
| Jan. 28..... | 8.02 a.m. | 34                    | -----          | 18     | 82                    | 30             | -----  |
| Jan. 29..... | 8.02 a.m. | 24                    | -----          | 28     | 78                    | 26             | -----  |
| Jan. 30..... | 8.02 a.m. | 32                    | -----          | 20     | 84                    | 32             | -----  |
| Jan. 31..... | 8.02 a.m. | 24                    | -----          | 28     | 82                    | 30             | -----  |
| Jan. 22..... | 8.22 a.m. | 24                    | -----          | 28     | 31                    | -----          | 21     |
| Jan. 23..... | 8.22 a.m. | 25                    | -----          | 27     | 45                    | -----          | 7      |
| Jan. 24..... | 8.22 a.m. | 20                    | -----          | 32     | 52                    | -----          | -----  |
| Jan. 25..... | 8.22 a.m. | 11                    | -----          | 41     | 54                    | 2              | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.22 a.m. | 27                    | -----          | 25     | 51                    | -----          | 1      |
| Jan. 28..... | 8.22 a.m. | 6                     | -----          | 46     | 46                    | -----          | 6      |
| Jan. 29..... | 8.22 a.m. | 22                    | -----          | 30     | 40                    | -----          | 12     |
| Jan. 30..... | 8.22 a.m. | 15                    | -----          | 37     | 22                    | -----          | 30     |
| Jan. 31..... | 8.22 a.m. | 20                    | -----          | 32     | 49                    | -----          | 3      |
| Jan. 22..... | 8.42 a.m. | 11                    | -----          | 41     | 26                    | -----          | 26     |
| Jan. 23..... | 8.42 a.m. | 3                     | -----          | 49     | 22                    | -----          | 30     |
| Jan. 24..... | 8.42 a.m. | 8                     | -----          | 44     | 18                    | -----          | 34     |
| Jan. 25..... | 8.42 a.m. | 6                     | -----          | 46     | 34                    | -----          | 18     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 8.42 a.m. | 5                     | -----          | 47     | 26                    | -----          | 26     |
| Jan. 28..... | 8.42 a.m. | 14                    | -----          | 38     | 33                    | -----          | 19     |
| Jan. 29..... | 8.42 a.m. | 2                     | -----          | 50     | 31                    | -----          | 21     |
| Jan. 30..... | 8.42 a.m. | 5                     | -----          | 47     | 19                    | -----          | 33     |
| Jan. 31..... | 8.42 a.m. | 15                    | -----          | 37     | 21                    | -----          | 31     |
| Jan. 22..... | 9.02 a.m. | 8                     | -----          | 44     | 25                    | -----          | 27     |
| Jan. 23..... | 9.02 a.m. | 7                     | -----          | 45     | 8                     | -----          | 44     |
| Jan. 24..... | 9.02 a.m. | 4                     | -----          | 48     | 22                    | -----          | 30     |
| Jan. 25..... | 9.02 a.m. | 12                    | -----          | 40     | 65                    | 13             | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 9.02 a.m. | 19                    | -----          | 33     | 37                    | -----          | 15     |
| Jan. 28..... | 9.02 a.m. | 8                     | -----          | 44     | 48                    | -----          | 4      |
| Jan. 29..... | 9.02 a.m. | 7                     | -----          | 45     | 52                    | -----          | -----  |
| Jan. 30..... | 9.02 a.m. | 4                     | -----          | 48     | 14                    | -----          | 38     |
| Jan. 31..... | 9.02 a.m. | 9                     | -----          | 43     | 34                    | -----          | 18     |
| Jan. 22..... | 9.22 a.m. | 8                     | -----          | 44     | 50                    | -----          | 2      |
| Jan. 23..... | 9.22 a.m. | 12                    | -----          | 40     | 49                    | -----          | 3      |
| Jan. 24..... | 9.22 a.m. | 14                    | -----          | 38     | 61                    | 9              | -----  |
| Jan. 25..... | 9.22 a.m. | 7                     | -----          | 45     | 40                    | -----          | 12     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 9.22 a.m. | 3                     | -----          | 49     | 56                    | 4              | -----  |
| Jan. 28..... | 9.22 a.m. | 9                     | -----          | 43     | 33                    | -----          | 19     |
| Jan. 29..... | 9.22 a.m. | 3                     | -----          | 49     | 44                    | -----          | 8      |
| Jan. 30..... | 9.22 a.m. | 11                    | -----          | 41     | 56                    | 4              | -----  |
| Jan. 31..... | 9.22 a.m. | 8                     | -----          | 44     | 57                    | 5              | -----  |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 9.42 a.m.  | 9                     | -----          | 43     | 62                    | 10             | -----  |
| Jan. 23..... | 9.42 a.m.  | 3                     | -----          | 49     | 34                    | -----          | 18     |
| Jan. 24..... | 9.42 a.m.  | 5                     | -----          | 47     | 35                    | -----          | 17     |
| Jan. 25..... | 9.42 a.m.  | 6                     | -----          | 46     | 61                    | 9              | -----  |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 9.42 a.m.  | 8                     | -----          | 44     | 38                    | -----          | 14     |
| Jan. 28..... | 9.42 a.m.  | 6                     | -----          | 46     | 22                    | -----          | 30     |
| Jan. 29..... | 9.42 a.m.  | 7                     | -----          | 45     | 36                    | -----          | 16     |
| Jan. 30..... | 9.42 a.m.  | 5                     | -----          | 47     | 18                    | -----          | 34     |
| Jan. 31..... | 9.42 a.m.  | 5                     | -----          | 47     | 42                    | -----          | 10     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 10.02 a.m. | 12                    | -----          | 40     | 47                    | -----          | 5      |
| Jan. 23..... | 10.02 a.m. | 7                     | -----          | 45     | 60                    | 8              | -----  |
| Jan. 24..... | 10.02 a.m. | 9                     | -----          | 43     | 40                    | -----          | 12     |
| Jan. 25..... | 10.02 a.m. | 17                    | -----          | 35     | 20                    | -----          | 32     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.02 a.m. | 12                    | -----          | 40     | 50                    | -----          | 2      |
| Jan. 28..... | 10.02 a.m. | 11                    | -----          | 41     | 32                    | -----          | 20     |
| Jan. 29..... | 10.02 a.m. | 8                     | -----          | 44     | 39                    | -----          | 13     |
| Jan. 30..... | 10.02 a.m. | 1                     | -----          | 51     | 29                    | -----          | 23     |
| Jan. 31..... | 10.02 a.m. | 8                     | -----          | 44     | 41                    | -----          | 11     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 10.22 a.m. | 9                     | -----          | 43     | 40                    | -----          | 12     |
| Jan. 23..... | 10.22 a.m. | 14                    | -----          | 38     | 46                    | -----          | 6      |
| Jan. 24..... | 10.22 a.m. | 9                     | -----          | 43     | 34                    | -----          | 18     |
| Jan. 25..... | 10.22 a.m. | 11                    | -----          | 41     | 60                    | 8              | -----  |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.22 a.m. | 4                     | -----          | 48     | 38                    | -----          | 14     |
| Jan. 28..... | 10.22 a.m. | 3                     | -----          | 49     | 27                    | -----          | 25     |
| Jan. 29..... | 10.22 a.m. | 7                     | -----          | 45     | 39                    | -----          | 13     |
| Jan. 30..... | 10.22 a.m. | 8                     | -----          | 44     | 26                    | -----          | 26     |
| Jan. 31..... | 10.22 a.m. | 8                     | -----          | 44     | 30                    | -----          | 22     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 10.42 a.m. | 11                    | -----          | 41     | 46                    | -----          | 6      |
| Jan. 23..... | 10.42 a.m. | 5                     | -----          | 47     | 46                    | -----          | 6      |
| Jan. 24..... | 10.42 a.m. | 5                     | -----          | 47     | 34                    | -----          | 18     |
| Jan. 25..... | 10.42 a.m. | 4                     | -----          | 48     | 42                    | -----          | 10     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.42 a.m. | 10                    | -----          | 42     | 52                    | -----          | ---    |
| Jan. 28..... | 10.42 a.m. | 5                     | -----          | 47     | 16                    | -----          | 36     |
| Jan. 29..... | 10.42 a.m. | 5                     | -----          | 47     | 39                    | -----          | 13     |
| Jan. 30..... | 10.42 a.m. | 5                     | -----          | 47     | 20                    | -----          | 32     |
| Jan. 31..... | 10.42 a.m. | 5                     | -----          | 47     | 14                    | -----          | 38     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 11.02 a.m. | 9                     | -----          | 43     | 30                    | -----          | 22     |
| Jan. 23..... | 11.02 a.m. | 35                    | -----          | 17     | 16                    | -----          | 36     |
| Jan. 24..... | 11.02 a.m. | 15                    | -----          | 37     | 31                    | -----          | 21     |
| Jan. 25..... | 11.02 a.m. | 19                    | -----          | 33     | 67                    | 15             | -----  |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.02 a.m. | 8                     | -----          | 44     | 47                    | -----          | 5      |
| Jan. 28..... | 11.02 a.m. | 9                     | -----          | 43     | 51                    | -----          | 1      |
| Jan. 29..... | 11.02 a.m. | 5                     | -----          | 47     | 50                    | -----          | 2      |
| Jan. 30..... | 11.02 a.m. | 14                    | -----          | 38     | 34                    | -----          | 18     |
| Jan. 31..... | 11.02 a.m. | 4                     | -----          | 48     | 37                    | -----          | 15     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 11.22 a.m. | 2                     | -----          | 50     | 40                    | -----          | 12     |
| Jan. 23..... | 11.22 a.m. | 6                     | -----          | 46     | 44                    | -----          | 8      |
| Jan. 24..... | 11.22 a.m. | 14                    | -----          | 38     | 61                    | 9              | -----  |
| Jan. 25..... | 11.22 a.m. | 14                    | -----          | 38     | 50                    | -----          | 2      |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.22 a.m. | 1                     | -----          | 51     | 35                    | -----          | 17     |
| Jan. 28..... | 11.22 a.m. | 9                     | -----          | 43     | 16                    | -----          | 36     |
| Jan. 29..... | 11.22 a.m. | 4                     | -----          | 48     | 29                    | -----          | 23     |
| Jan. 30..... | 11.22 a.m. | 6                     | -----          | 46     | 40                    | -----          | 12     |
| Jan. 31..... | 11.22 a.m. | 5                     | -----          | 47     | 18                    | -----          | 34     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 11.42 a.m. | 12                    | -----          | 40     | 40                    | -----          | 12     |
| Jan. 23..... | 11.42 a.m. | 3                     | -----          | 49     | 35                    | -----          | 17     |
| Jan. 24..... | 11.42 a.m. | 17                    | -----          | 35     | 20                    | -----          | 32     |
| Jan. 25..... | 11.42 a.m. | 17                    | -----          | 35     | 50                    | -----          | 2      |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.42 a.m. | 11                    | -----          | 41     | 28                    | -----          | 24     |
| Jan. 28..... | 11.42 a.m. | 4                     | -----          | 48     | 35                    | -----          | 17     |
| Jan. 29..... | 11.42 a.m. | 5                     | -----          | 47     | 34                    | -----          | 18     |
| Jan. 30..... | 11.42 a.m. | 8                     | -----          | 44     | 30                    | -----          | 22     |
| Jan. 31..... | 11.42 a.m. | 5                     | -----          | 47     | 20                    | -----          | 32     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 12.02 p.m. | 4                     | -----          | 48     | 35                    | -----          | 17     |
| Jan. 23..... | 12.02 p.m. | 12                    | -----          | 40     | 55                    | 3              | -----  |
| Jan. 24..... | 12.02 p.m. | 3                     | -----          | 49     | 16                    | -----          | 36     |
| Jan. 25..... | 12.02 p.m. | 13                    | -----          | 39     | 43                    | -----          | 9      |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 12.02 p.m. | 6                     | -----          | 46     | 37                    | -----          | 15     |
| Jan. 28..... | 12.02 p.m. | 8                     | -----          | 44     | 27                    | -----          | 25     |
| Jan. 29..... | 12.02 p.m. | 3                     | -----          | 49     | 34                    | -----          | 18     |
| Jan. 30..... | 12.02 p.m. | 2                     | -----          | 50     | 32                    | -----          | 20     |
| Jan. 31..... | 12.02 p.m. | 8                     | -----          | 44     | 44                    | -----          | 8      |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 12.22 p.m. | 4                     | -----          | 48     | 59                    | 7              | -----  |
| Jan. 23..... | 12.22 p.m. | 6                     | -----          | 46     | 23                    | -----          | 29     |
| Jan. 24..... | 12.22 p.m. | 9                     | -----          | 43     | 32                    | -----          | 20     |
| Jan. 25..... | 12.22 p.m. | 6                     | -----          | 46     | 40                    | -----          | 12     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 12.22 p.m. | 7                     | -----          | 45     | 56                    | 4              | -----  |
| Jan. 28..... | 12.22 p.m. | 8                     | -----          | 44     | 43                    | -----          | 0      |
| Jan. 29..... | 12.22 p.m. | 1                     | -----          | 51     | 20                    | -----          | 32     |
| Jan. 30..... | 12.22 p.m. | 11                    | -----          | 41     | 31                    | -----          | 21     |
| Jan. 31..... | 12.22 p.m. | 5                     | -----          | 47     | 47                    | -----          | 5      |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 12.42 p.m. | 11                    | -----          | 41     | 40                    | -----          | 12     |
| Jan. 23..... | 12.42 p.m. | 6                     | -----          | 46     | 23                    | -----          | 29     |
| Jan. 24..... | 12.42 p.m. | 4                     | -----          | 48     | 41                    | -----          | 11     |
| Jan. 25..... | 12.42 p.m. | 15                    | -----          | 37     | 59                    | 7              | -----  |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 12.42 p.m. | 8                     | -----          | 44     | 45                    | -----          | 7      |
| Jan. 28..... | 12.42 p.m. | 6                     | -----          | 46     | 40                    | -----          | 12     |
| Jan. 29..... | 12.42 p.m. | 6                     | -----          | 46     | 50                    | -----          | 2      |
| Jan. 30..... | 12.42 p.m. | 6                     | -----          | 46     | 44                    | -----          | 8      |
| Jan. 31..... | 12.42 p.m. | 3                     | -----          | 49     | 60                    | -----          | 8      |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 1.02 p.m. | 12                    | -----          | 40     | 66                    | 14             | -----  |
| Jan. 23..... | 1.02 p.m. | 9                     | -----          | 43     | 6                     | -----          | 46     |
| Jan. 24..... | 1.02 p.m. | 10                    | -----          | 40     | 64                    | 12             | -----  |
| Jan. 25..... | 1.02 p.m. | 12                    | -----          | 40     | 53                    | 1              | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 1.02 p.m. | 5                     | -----          | 47     | 54                    | 2              | -----  |
| Jan. 28..... | 1.02 p.m. | 4                     | -----          | 48     | 31                    | -----          | 21     |
| Jan. 29..... | 1.02 p.m. | 7                     | -----          | 45     | 89                    | 37             | -----  |
| Jan. 30..... | 1.02 p.m. | 12                    | -----          | 40     | 56                    | 4              | -----  |
| Jan. 31..... | 1.02 p.m. | 14                    | -----          | 38     | 63                    | 11             | -----  |
| Jan. 22..... | 1.22 p.m. | 5                     | -----          | 47     | 78                    | 26             | -----  |
| Jan. 23..... | 1.22 p.m. | 7                     | -----          | 45     | 73                    | 21             | -----  |
| Jan. 24..... | 1.22 p.m. | 11                    | -----          | 41     | 48                    | -----          | 4      |
| Jan. 25..... | 1.22 p.m. | 27                    | -----          | 25     | 61                    | 9              | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 1.22 p.m. | 11                    | -----          | 41     | 42                    | -----          | 10     |
| Jan. 28..... | 1.22 p.m. | 6                     | -----          | 46     | 47                    | -----          | 5      |
| Jan. 29..... | 1.22 p.m. | 8                     | -----          | 44     | 87                    | 35             | -----  |
| Jan. 30..... | 1.22 p.m. | 9                     | -----          | 43     | 68                    | 16             | -----  |
| Jan. 31..... | 1.22 p.m. | 10                    | -----          | 42     | 72                    | 20             | -----  |
| Jan. 22..... | 1.42 p.m. | 10                    | -----          | 42     | 70                    | 18             | -----  |
| Jan. 23..... | 1.42 p.m. | 9                     | -----          | 43     | 70                    | 18             | -----  |
| Jan. 24..... | 1.42 p.m. | 13                    | -----          | 39     | 66                    | 14             | -----  |
| Jan. 25..... | 1.42 p.m. | 9                     | -----          | 43     | 40                    | -----          | 12     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 1.42 p.m. | 10                    | -----          | 42     | 55                    | 3              | -----  |
| Jan. 28..... | 1.42 p.m. | 8                     | -----          | 44     | 53                    | 1              | -----  |
| Jan. 29..... | 1.42 p.m. | 6                     | -----          | 46     | 57                    | 5              | -----  |
| Jan. 30..... | 1.42 p.m. | 4                     | -----          | 48     | 65                    | 13             | -----  |
| Jan. 31..... | 1.42 p.m. | 2                     | -----          | 50     | 57                    | 5              | -----  |
| Jan. 22..... | 2.02 p.m. | 14                    | -----          | 38     | 40                    | -----          | 12     |
| Jan. 23..... | 2.02 p.m. | 2                     | -----          | 50     | 62                    | 10             | -----  |
| Jan. 24..... | 2.02 p.m. | 5                     | -----          | 47     | 54                    | 2              | -----  |
| Jan. 25..... | 2.02 p.m. | 12                    | -----          | 40     | 58                    | 6              | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 2.02 p.m. | 9                     | -----          | 43     | 50                    | -----          | 2      |
| Jan. 28..... | 2.02 p.m. | 4                     | -----          | 48     | 40                    | -----          | 12     |
| Jan. 29..... | 2.02 p.m. | 4                     | -----          | 48     | 31                    | -----          | 21     |
| Jan. 30..... | 2.02 p.m. | 3                     | -----          | 49     | 38                    | -----          | 14     |
| Jan. 31..... | 2.02 p.m. | 10                    | -----          | 42     | 17                    | -----          | 35     |
| Jan. 22..... | 2.22 p.m. | 10                    | -----          | 42     | 44                    | -----          | 8      |
| Jan. 23..... | 2.22 p.m. | 9                     | -----          | 43     | 38                    | -----          | 14     |
| Jan. 24..... | 2.22 p.m. | 8                     | -----          | 44     | 34                    | -----          | 18     |
| Jan. 25..... | 2.22 p.m. | 11                    | -----          | 41     | 32                    | -----          | 20     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 2.22 p.m. | 11                    | -----          | 41     | 34                    | -----          | 18     |
| Jan. 28..... | 2.22 p.m. | 5                     | -----          | 47     | 42                    | -----          | 10     |
| Jan. 29..... | 2.22 p.m. | 11                    | -----          | 41     | 56                    | 4              | -----  |
| Jan. 30..... | 2.22 p.m. | 7                     | -----          | 45     | 37                    | -----          | 15     |
| Jan. 31..... | 2.22 p.m. | 5                     | -----          | 47     | 29                    | -----          | 23     |



## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 2.42 p.m. | 11                    | -----          | 41     | 31                    | -----          | 21     |
| Jan. 23..... | 2.42 p.m. | 6                     | -----          | 46     | 57                    | 5              | -----  |
| Jan. 24..... | 2.42 p.m. | 10                    | -----          | 42     | 62                    | 10             | -----  |
| Jan. 25..... | 2.42 p.m. | 8                     | -----          | 44     | 32                    | -----          | 20     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 2.42 p.m. | 17                    | -----          | 35     | 39                    | -----          | 13     |
| Jan. 28..... | 2.42 p.m. | 14                    | -----          | 38     | 72                    | 20             | -----  |
| Jan. 29..... | 2.42 p.m. | 5                     | -----          | 47     | 49                    | -----          | 3      |
| Jan. 30..... | 2.42 p.m. | 5                     | -----          | 47     | 50                    | -----          | 2      |
| Jan. 31..... | 2.42 p.m. | 9                     | -----          | 43     | 46                    | -----          | 6      |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 3.02 p.m. | 4                     | -----          | 48     | 21                    | -----          | 31     |
| Jan. 23..... | 3.02 p.m. | 6                     | -----          | 46     | 12                    | -----          | 40     |
| Jan. 24..... | 3.02 p.m. | 4                     | -----          | 48     | 26                    | -----          | 26     |
| Jan. 25..... | 3.02 p.m. | 8                     | -----          | 44     | 30                    | -----          | 22     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 3.02 p.m. | 10                    | -----          | 42     | 24                    | -----          | 28     |
| Jan. 28..... | 3.02 p.m. | 2                     | -----          | 50     | 21                    | -----          | 31     |
| Jan. 29..... | 3.02 p.m. | 5                     | -----          | 47     | 20                    | -----          | 32     |
| Jan. 30..... | 3.02 p.m. | 3                     | -----          | 49     | 18                    | -----          | 34     |
| Jan. 31..... | 3.02 p.m. | 4                     | -----          | 48     | 24                    | -----          | 28     |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 3.22 p.m. | 12                    | -----          | 40     | 41                    | -----          | 11     |
| Jan. 23..... | 3.22 p.m. | 10                    | -----          | 42     | 40                    | -----          | 12     |
| Jan. 24..... | 3.22 p.m. | 15                    | -----          | 37     | 13                    | -----          | 39     |
| Jan. 25..... | 3.22 p.m. | 4                     | -----          | 48     | 22                    | -----          | 30     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 3.22 p.m. | 7                     | -----          | 45     | 24                    | -----          | 28     |
| Jan. 28..... | 3.22 p.m. | 3                     | -----          | 49     | 21                    | -----          | 31     |
| Jan. 29..... | 3.22 p.m. | 13                    | -----          | 39     | 33                    | -----          | 19     |
| Jan. 30..... | 3.22 p.m. | 6                     | -----          | 46     | 15                    | -----          | 37     |
| Jan. 31..... | 3.22 p.m. | 5                     | -----          | 47     | 19                    | -----          | 33     |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 3.42 p.m. | 7                     | -----          | 45     | 16                    | -----          | 36     |
| Jan. 23..... | 3.42 p.m. | 8                     | -----          | 44     | 47                    | -----          | 5      |
| Jan. 24..... | 3.42 p.m. | 11                    | -----          | 41     | 26                    | -----          | 26     |
| Jan. 25..... | 3.42 p.m. | 6                     | -----          | 46     | 53                    | 1              | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 3.42 p.m. | 3                     | -----          | 49     | 14                    | -----          | 38     |
| Jan. 28..... | 3.42 p.m. | 11                    | -----          | 41     | 33                    | -----          | 19     |
| Jan. 29..... | 3.42 p.m. | 8                     | -----          | 44     | 19                    | -----          | 33     |
| Jan. 30..... | 3.42 p.m. | 2                     | -----          | 50     | 12                    | -----          | 40     |
| Jan. 31..... | 3.42 p.m. | 7                     | -----          | 45     | 21                    | -----          | 31     |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 4.02 p.m. | 6                     | -----          | 46     | 26                    | -----          | 26     |
| Jan. 23..... | 4.02 p.m. | 10                    | -----          | 42     | 49                    | -----          | 3      |
| Jan. 24..... | 4.02 p.m. | 2                     | -----          | 50     | 23                    | -----          | 29     |
| Jan. 25..... | 4.02 p.m. | 6                     | -----          | 46     | 29                    | -----          | 23     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 4.02 p.m. | 6                     | -----          | 46     | 20                    | -----          | 32     |
| Jan. 28..... | 4.02 p.m. | 3                     | -----          | 49     | 18                    | -----          | 34     |
| Jan. 29..... | 4.02 p.m. | 7                     | -----          | 45     | 26                    | -----          | 26     |
| Jan. 30..... | 4.02 p.m. | 5                     | -----          | 47     | 16                    | -----          | 36     |
| Jan. 31..... | 4.02 p.m. | 6                     | -----          | 46     | 34                    | -----          | 18     |

## OVERLOADING OF CARS—Continued.

| Date.   | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|---------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|         |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22 | 4.22 p.m. | 32                    |                | 20     | 29                    |                | 23     |
| Jan. 23 | 4.22 p.m. | 5                     |                | 47     | 21                    |                | 31     |
| Jan. 24 | 4.22 p.m. | 11                    |                | 41     | 50                    |                | 2      |
| Jan. 25 | 4.22 p.m. | 26                    |                | 26     | 46                    |                | 6      |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 4.22 p.m. | 11                    |                | 41     | 34                    |                | 18     |
| Jan. 28 | 4.22 p.m. | 7                     |                | 45     | 19                    |                | 33     |
| Jan. 29 | 4.22 p.m. | 22                    |                | 30     | 25                    |                | 27     |
| Jan. 30 | 4.22 p.m. | 6                     |                | 46     | 43                    |                | 9      |
| Jan. 31 | 4.22 p.m. | 14                    |                | 38     | 50                    |                | 2      |
| Jan. 22 | 4.42 p.m. | 8                     |                | 44     | 15                    |                | 37     |
| Jan. 23 | 4.42 p.m. | 18                    |                | 34     | 23                    |                | 29     |
| Jan. 24 | 4.42 p.m. | 9                     |                | 43     | 29                    |                | 23     |
| Jan. 25 | 4.42 p.m. | 16                    |                | 36     | 27                    |                | 25     |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 4.42 p.m. | 7                     |                | 45     | 31                    |                | 21     |
| Jan. 28 | 4.42 p.m. | 14                    |                | 38     | 39                    |                | 13     |
| Jan. 29 | 4.42 p.m. | 12                    |                | 40     | 29                    |                | 23     |
| Jan. 30 | 4.42 p.m. | 22                    |                | 30     | 30                    |                | 22     |
| Jan. 31 | 4.42 p.m. | 11                    |                | 41     | 30                    |                | 22     |
| Jan. 22 | 5.02 p.m. | 19                    |                | 33     | 53                    | 1              |        |
| Jan. 23 | 5.02 p.m. | 33                    |                | 19     | 61                    | 9              |        |
| Jan. 24 | 5.02 p.m. | 27                    |                | 25     | 31                    |                | 21     |
| Jan. 25 | 5.02 p.m. | 9                     |                | 43     | 43                    |                | 9      |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 5.02 p.m. | 5                     |                | 47     | 18                    |                | 34     |
| Jan. 28 | 5.08 p.m. | 12                    |                | 40     | 25                    |                | 27     |
| Jan. 29 | 5.02 p.m. | 12                    |                | 40     | 21                    |                | 31     |
| Jan. 30 | 5.02 p.m. | 14                    |                | 38     | 19                    |                | 33     |
| Jan. 31 | 5.02 p.m. | 9                     |                | 43     | 25                    |                | 27     |
| Jan. 22 | 5.22 p.m. | 2                     |                | 50     | 20                    |                | 32     |
| Jan. 23 | 5.22 p.m. | 6                     |                | 46     | 44                    |                | 8      |
| Jan. 24 | 5.22 p.m. | 5                     |                | 47     | 33                    |                | 19     |
| Jan. 25 | 5.22 p.m. | 4                     |                | 48     | 29                    |                | 23     |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 5.22 p.m. | 2                     |                | 50     | 21                    |                | 31     |
| Jan. 28 | 5.22 p.m. | 6                     |                | 46     | 24                    |                | 28     |
| Jan. 29 | 5.22 p.m. | 4                     |                | 48     | 28                    |                | 24     |
| Jan. 30 | 5.22 p.m. | 14                    |                | 38     | 28                    |                | 24     |
| Jan. 31 | 5.22 p.m. | 12                    |                | 40     | 55                    | 3              |        |
| Jan. 22 | 5.42 p.m. | 11                    |                | 41     | 16                    |                | 36     |
| Jan. 23 | 5.42 p.m. | 3                     |                | 49     | 15                    |                | 37     |
| Jan. 24 | 5.42 p.m. | 24                    |                | 28     | 20                    |                | 32     |
| Jan. 25 | 5.42 p.m. | 10                    |                | 42     | 81                    | 29             |        |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 5.42 p.m. | 11                    |                | 41     | 38                    |                | 14     |
| Jan. 28 | 5.42 p.m. | 2                     |                | 50     | 6                     |                | 46     |
| Jan. 29 | 5.42 p.m. | 2                     |                | 50     | 15                    |                | 37     |
| Jan. 30 | 5.42 p.m. | 7                     |                | 35     | 32                    |                | 20     |
| Jan. 31 | 5.42 p.m. | 6                     |                | 46     | 10                    |                | 42     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 6.02 p.m. | 5                     | -----          | 47     | 10                    | -----          | 42     |
| Jan. 23..... | 6.02 p.m. | 4                     | -----          | 48     | 19                    | -----          | 33     |
| Jan. 24..... | 6.02 p.m. | 2                     | -----          | 50     | 43                    | -----          | 9      |
| Jan. 25..... | 6.02 p.m. | 9                     | -----          | 43     | 111                   | 59             | -----  |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.02 p.m. | 7                     | -----          | 45     | 22                    | -----          | 30     |
| Jan. 28..... | 6.02 p.m. | 7                     | -----          | 45     | 17                    | -----          | 35     |
| Jan. 29..... | 6.02 p.m. | 12                    | -----          | 40     | 25                    | -----          | 27     |
| Jan. 30..... | 6.02 p.m. | 9                     | -----          | 43     | 20                    | -----          | 32     |
| Jan. 31..... | 6.02 p.m. | 4                     | -----          | 48     | 22                    | -----          | 30     |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 6.22 p.m. | 7                     | -----          | 45     | 36                    | -----          | 16     |
| Jan. 23..... | 6.22 p.m. | 5                     | -----          | 47     | 19                    | -----          | 33     |
| Jan. 24..... | 6.22 p.m. | 4                     | -----          | 48     | 58                    | 6              | -----  |
| Jan. 25..... | 6.22 p.m. | 17                    | -----          | 35     | 32                    | -----          | 20     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.22 p.m. | 4                     | -----          | 48     | 10                    | -----          | 42     |
| Jan. 28..... | 6.22 p.m. | 5                     | -----          | 47     | 42                    | -----          | 10     |
| Jan. 29..... | 6.22 p.m. | 2                     | -----          | 50     | 14                    | -----          | 38     |
| Jan. 30..... | 6.22 p.m. | 7                     | -----          | 45     | 30                    | -----          | 22     |
| Jan. 31..... | 6.22 p.m. | 3                     | -----          | 49     | 32                    | -----          | 20     |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 6.42 p.m. | 11                    | -----          | 41     | 61                    | 9              | -----  |
| Jan. 23..... | 6.42 p.m. | 11                    | -----          | 41     | 40                    | -----          | 12     |
| Jan. 24..... | 6.42 p.m. | 13                    | -----          | 39     | 18                    | -----          | 34     |
| Jan. 25..... | 6.42 p.m. | 2                     | -----          | 50     | 49                    | -----          | 3      |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 6.42 p.m. | 0                     | -----          | 52     | 15                    | -----          | 37     |
| Jan. 28..... | 6.42 p.m. | 6                     | -----          | 46     | 5                     | -----          | 47     |
| Jan. 29..... | 6.42 p.m. | 5                     | -----          | 47     | 40                    | -----          | 12     |
| Jan. 30..... | 6.42 p.m. | 5                     | -----          | 47     | 35                    | -----          | 17     |
| Jan. 31..... | 6.42 p.m. | 5                     | -----          | 47     | 17                    | -----          | 35     |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 7.02 p.m. | 7                     | -----          | 45     | 38                    | -----          | 14     |
| Jan. 23..... | 7.02 p.m. | 3                     | -----          | 49     | 46                    | -----          | 6      |
| Jan. 24..... | 7.02 p.m. | 13                    | -----          | 39     | 27                    | -----          | 25     |
| Jan. 25..... | 7.02 p.m. | 8                     | -----          | 44     | 36                    | -----          | 16     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.02 p.m. | 8                     | -----          | 44     | 18                    | -----          | 34     |
| Jan. 28..... | 7.02 p.m. | 3                     | -----          | 49     | 36                    | -----          | 16     |
| Jan. 29..... | 7.02 p.m. | 4                     | -----          | 48     | 30                    | -----          | 22     |
| Jan. 30..... | 7.02 p.m. | 2                     | -----          | 50     | 80                    | 28             | -----  |
| Jan. 31..... | 7.02 p.m. | 5                     | -----          | 47     | 46                    | -----          | 6      |
|              |           |                       |                |        |                       |                |        |
| Jan. 22..... | 7.22 p.m. | 2                     | -----          | 50     | 32                    | -----          | 20     |
| Jan. 23..... | 7.22 p.m. | 7                     | -----          | 45     | 28                    | -----          | 24     |
| Jan. 24..... | 7.22 p.m. | 6                     | -----          | 46     | 52                    | -----          |        |
| Jan. 25..... | 7.22 p.m. | 12                    | -----          | 40     | 41                    | -----          | 11     |
| Jan. 26..... | Sunday    |                       |                |        |                       |                |        |
| Jan. 27..... | 7.22 p.m. | 9                     | -----          | 43     | 20                    | -----          | 32     |
| Jan. 28..... | 7.22 p.m. | 2                     | -----          | 50     | 48                    | -----          | 4      |
| Jan. 29..... | 7.22 p.m. | 7                     | -----          | 45     | 56                    | 4              | -----  |
| Jan. 30..... | 7.22 p.m. | 10                    | -----          | 42     | 26                    | -----          | 26     |
| Jan. 31..... | 7.22 p.m. | 3                     | -----          | 49     | 42                    | -----          | 10     |

## OVERLOADING OF CARS—Continued.

| Date.   | Time.     | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|---------|-----------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|         |           | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22 | 7.42 p.m. | 2                     |                | 50     | 32                    |                | 20     |
| Jan. 23 | 7.42 p.m. | 4                     |                | 48     | 16                    |                | 36     |
| Jan. 24 | 7.42 p.m. |                       |                | 47     | 49                    |                | 3      |
| Jan. 25 | 7.42 p.m. | 19                    |                | 33     | 38                    |                | 14     |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 7.42 p.m. | 4                     |                | 48     | 33                    |                | 19     |
| Jan. 28 | 7.42 p.m. | 6                     |                | 46     | 50                    |                | 2      |
| Jan. 29 | 7.42 p.m. | 10                    |                | 42     | 79                    | 27             |        |
| Jan. 30 | 7.42 p.m. | 4                     |                | 48     | 30                    |                | 22     |
| Jan. 31 | 7.42 p.m. | 3                     |                | 49     | 80                    | 28             |        |
| Jan. 22 | 8.02 p.m. | 2                     |                | 50     | 29                    |                | 23     |
| Jan. 23 | 8.02 p.m. | 5                     |                | 47     | 35                    |                | 17     |
| Jan. 24 | 8.02 p.m. | 5                     |                | 47     | 31                    |                | 21     |
| Jan. 25 | 8.02 p.m. | 7                     |                | 45     | 39                    |                | 13     |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 8.02 p.m. | 1                     |                | 51     | 34                    |                | 18     |
| Jan. 28 | 8.02 p.m. | 4                     |                | 48     | 33                    |                | 19     |
| Jan. 29 | 8.02 p.m. | 1                     |                | 51     | 22                    |                | 30     |
| Jan. 30 | 8.02 p.m. | 4                     |                | 48     | 29                    |                | 23     |
| Jan. 31 | 8.02 p.m. | 5                     |                | 47     | 53                    | 1              |        |
| Jan. 22 | 8.22 p.m. | 3                     |                | 49     | 16                    |                | 36     |
| Jan. 23 | 8.22 p.m. | 2                     |                | 50     | 28                    |                | 24     |
| Jan. 24 | 8.22 p.m. | 0                     |                | 52     | 19                    |                | 33     |
| Jan. 25 | 8.22 p.m. | 3                     |                | 49     | 18                    |                | 34     |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 8.22 p.m. | 2                     |                | 50     | 31                    |                | 21     |
| Jan. 28 | 8.22 p.m. | 3                     |                | 49     | 28                    |                | 24     |
| Jan. 29 | 8.22 p.m. | 3                     |                | 49     | 29                    |                | 23     |
| Jan. 30 | 8.22 p.m. | 8                     |                | 44     | 27                    |                | 25     |
| Jan. 31 | 8.22 p.m. | 8                     |                | 44     | 25                    |                | 27     |
| Jan. 22 | 8.42 p.m. | 8                     |                | 44     | 47                    |                | 5      |
| Jan. 23 | 8.42 p.m. | 3                     |                | 49     | 30                    |                | 22     |
| Jan. 24 | 8.42 p.m. | 5                     |                | 47     | 9                     |                | 43     |
| Jan. 25 | 8.42 p.m. | 5                     |                | 47     | 14                    |                | 38     |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 8.42 p.m. | 7                     |                | 45     | 19                    |                | 33     |
| Jan. 28 | 8.42 p.m. | 2                     |                | 50     | 18                    |                | 34     |
| Jan. 29 | 8.42 p.m. | 1                     |                | 51     | 11                    |                | 41     |
| Jan. 30 | 8.42 p.m. | 4                     |                | 48     | 30                    |                | 22     |
| Jan. 31 | 8.42 p.m. | 7                     |                | 45     | 16                    |                | 36     |
| Jan. 22 | 9.02 p.m. | 1                     |                | 51     | 24                    |                | 28     |
| Jan. 23 | 9.02 p.m. | 2                     |                | 50     | 16                    |                | 36     |
| Jan. 24 | 9.02 p.m. | 1                     |                | 51     | 51                    |                | 1      |
| Jan. 25 | 9.02 p.m. | 1                     |                | 51     | 14                    |                | 38     |
| Jan. 26 | Sunday    |                       |                |        |                       |                |        |
| Jan. 27 | 9.02 p.m. | 1                     |                | 51     | 38                    |                | 14     |
| Jan. 28 | 9.02 p.m. | 3                     |                | 49     | 32                    |                | 20     |
| Jan. 29 | 9.02 p.m. | 2                     |                | 50     | 15                    |                | 37     |
| Jan. 30 | 9.02 p.m. | 5                     |                | 47     | 14                    |                | 38     |
| Jan. 31 | 9.02 p.m. | 1                     |                | 51     | 35                    |                | 17     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 9.22 p.m.  | 0                     | -----          | 52     | 15                    | -----          | 37     |
| Jan. 23..... | 9.22 p.m.  | 2                     | -----          | 50     | 12                    | -----          | 40     |
| Jan. 24..... | 9.22 p.m.  | 4                     | -----          | 48     | 23                    | -----          | 29     |
| Jan. 25..... | 9.22 p.m.  | 8                     | -----          | 44     | 4                     | -----          | 48     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 9.22 p.m.  | 3                     | -----          | 49     | 28                    | -----          | 24     |
| Jan. 28..... | 9.22 p.m.  | 4                     | -----          | 48     | 15                    | -----          | 37     |
| Jan. 29..... | 9.22 p.m.  | 1                     | -----          | 51     | 11                    | -----          | 41     |
| Jan. 30..... | 9.22 p.m.  | 1                     | -----          | 51     | 14                    | -----          | 38     |
| Jan. 31..... | 9.22 p.m.  | 5                     | -----          | 47     | 39                    | -----          | 13     |
| <hr/>        |            |                       |                |        |                       |                |        |
| Jan. 22..... | 9.42 p.m.  | 8                     | -----          | 44     | 47                    | -----          | 5      |
| Jan. 23..... | 9.42 p.m.  | 2                     | -----          | 50     | 8                     | -----          | 44     |
| Jan. 24..... | 9.42 p.m.  | 5                     | -----          | 47     | 27                    | -----          | 25     |
| Jan. 25..... | 9.42 p.m.  | 2                     | -----          | 50     | 13                    | -----          | 39     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 9.42 p.m.  | 3                     | -----          | 49     | 11                    | -----          | 41     |
| Jan. 28..... | 9.42 p.m.  | 1                     | -----          | 51     | 14                    | -----          | 38     |
| Jan. 29..... | 9.42 p.m.  | 2                     | -----          | 50     | 24                    | -----          | 28     |
| Jan. 30..... | 9.42 p.m.  | 6                     | -----          | 46     | 8                     | -----          | 48     |
| Jan. 31..... | 9.42 p.m.  | 1                     | -----          | 51     | 20                    | -----          | 32     |
| <hr/>        |            |                       |                |        |                       |                |        |
| Jan. 22..... | 10.02 p.m. | 7                     | -----          | 45     | 14                    | -----          | 38     |
| Jan. 23..... | 10.02 p.m. | 3                     | -----          | 29     | 26                    | -----          | 26     |
| Jan. 24..... | 10.02 p.m. | 4                     | -----          | 48     | 19                    | -----          | 33     |
| Jan. 25..... | 10.02 p.m. | 1                     | -----          | 51     | 13                    | -----          | 39     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.02 p.m. | 1                     | -----          | 51     | 38                    | -----          | 14     |
| Jan. 28..... | 10.02 p.m. | 4                     | -----          | 48     | 25                    | -----          | 27     |
| Jan. 29..... | 10.02 p.m. | 0                     | -----          | 52     | 30                    | -----          | 22     |
| Jan. 30..... | 10.02 p.m. | 4                     | -----          | 48     | 25                    | -----          | 27     |
| Jan. 31..... | 10.02 p.m. | 2                     | -----          | 50     | 41                    | -----          | 11     |
| <hr/>        |            |                       |                |        |                       |                |        |
| Jan. 22..... | 10.22 p.m. | 7                     | -----          | 45     | 18                    | -----          | 34     |
| Jan. 23..... | 10.22 p.m. | 2                     | -----          | 50     | 0                     | -----          | 52     |
| Jan. 24..... | 10.22 p.m. | 0                     | -----          | 52     | 17                    | -----          | 35     |
| Jan. 25..... | 10.22 p.m. | 2                     | -----          | 50     | 18                    | -----          | 34     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.22 p.m. | 1                     | -----          | 51     | 4                     | -----          | 48     |
| Jan. 28..... | 10.22 p.m. | 3                     | -----          | 49     | 10                    | -----          | 42     |
| Jan. 29..... | 10.22 p.m. | 5                     | -----          | 47     | 24                    | -----          | 28     |
| Jan. 30..... | 10.22 p.m. | 3                     | -----          | 49     | 21                    | -----          | 31     |
| Jan. 31..... | 10.22 p.m. | 2                     | -----          | 50     | 14                    | -----          | 38     |
| <hr/>        |            |                       |                |        |                       |                |        |
| Jan. 22..... | 10.42 p.m. | 4                     | -----          | 48     | 9                     | -----          | 43     |
| Jan. 23..... | 10.42 p.m. | 3                     | -----          | 49     | 13                    | -----          | 39     |
| Jan. 24..... | 10.42 p.m. | 1                     | -----          | 51     | 37                    | -----          | 15     |
| Jan. 25..... | 10.42 p.m. | 3                     | -----          | 29     | 8                     | -----          | 44     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 10.42 p.m. | 5                     | -----          | 47     | 7                     | -----          | 45     |
| Jan. 28..... | 10.42 p.m. | 1                     | -----          | 51     | 18                    | -----          | 34     |
| Jan. 29..... | 10.42 p.m. | 1                     | -----          | 51     | 19                    | -----          | 33     |
| Jan. 30..... | 10.42 p.m. | 3                     | -----          | 49     | 8                     | -----          | 44     |
| Jan. 31..... | 10.42 p.m. | 1                     | -----          | 51     | 6                     | -----          | 46     |

## OVERLOADING OF CARS—Continued.

| Date.        | Time.      | Oakland East Limited. |                |        | Oakland First Avenue. |                |        |
|--------------|------------|-----------------------|----------------|--------|-----------------------|----------------|--------|
|              |            | Passen-<br>gers.      | Over-<br>load. | Seats. | Passen-<br>gers.      | Over-<br>load. | Seats. |
| Jan. 22..... | 11.02 p.m. | 11                    | -----          | 41     | 30                    | -----          | 22     |
| Jan. 23..... | 11.02 p.m. | 1                     | -----          | 51     | 15                    | -----          | 37     |
| Jan. 24..... | 11.02 p.m. | 0                     | -----          | 52     | 9                     | -----          | 43     |
| Jan. 25..... | 11.02 p.m. | 3                     | -----          | 49     | 7                     | -----          | 45     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.02 p.m. | 0                     | -----          | 52     | 4                     | -----          | 48     |
| Jan. 28..... | 11.02 p.m. | 1                     | -----          | 51     | 18                    | -----          | 34     |
| Jan. 29..... | 11.02 p.m. | 3                     | -----          | 49     | 18                    | -----          | 34     |
| Jan. 30..... | 11.02 p.m. | 2                     | -----          | 50     | 7                     | -----          | 45     |
| Jan. 31..... | 11.02 p.m. | 4                     | -----          | 48     | 25                    | -----          | 27     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 11.22 p.m. | 2                     | -----          | 50     | 5                     | -----          | 47     |
| Jan. 23..... | 11.22 p.m. | 4                     | -----          | 48     | 14                    | -----          | 38     |
| Jan. 24..... | 11.22 p.m. | 4                     | -----          | 48     | 5                     | -----          | 47     |
| Jan. 25..... | 11.22 p.m. | 1                     | -----          | 51     | 18                    | -----          | 34     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.22 p.m. | 0                     | -----          | 52     | 11                    | -----          | 41     |
| Jan. 28..... | 11.22 p.m. | 0                     | -----          | 52     | 10                    | -----          | 42     |
| Jan. 29..... | 11.22 p.m. | 0                     | -----          | 52     | 19                    | -----          | 33     |
| Jan. 30..... | 11.22 p.m. | 0                     | -----          | 52     | 22                    | -----          | 30     |
| Jan. 31..... | 11.22 p.m. | 1                     | -----          | 52     | 6                     | -----          | 46     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 11.42 p.m. | 2                     | -----          | 50     | 10                    | -----          | 42     |
| Jan. 23..... | 11.42 p.m. | 3                     | -----          | 49     | 12                    | -----          | 40     |
| Jan. 24..... | 11.42 p.m. | 1                     | -----          | 51     | 7                     | -----          | 45     |
| Jan. 25..... | 11.42 p.m. | 1                     | -----          | 51     | 20                    | -----          | 32     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 11.42 p.m. | 0                     | -----          | 52     | 3                     | -----          | 49     |
| Jan. 28..... | 11.42 p.m. | 0                     | -----          | 52     | 14                    | -----          | 38     |
| Jan. 29..... | 11.42 p.m. | 0                     | -----          | 52     | 6                     | -----          | 46     |
| Jan. 30..... | 11.42 p.m. | 0                     | -----          | 52     | 38                    | -----          | 14     |
| Jan. 31..... | 11.42 p.m. | 3                     | -----          | 49     | 14                    | -----          | 38     |
|              |            |                       |                |        |                       |                |        |
| Jan. 22..... | 12.02 a.m. | 1                     | -----          | 51     | 18                    | -----          | 34     |
| Jan. 23..... | 12.02 a.m. | 9                     | -----          | 43     | 10                    | -----          | 42     |
| Jan. 24..... | 12.02 a.m. | 0                     | -----          | 52     | 6                     | -----          | 46     |
| Jan. 25..... | 12.02 a.m. | 2                     | -----          | 50     | 10                    | -----          | 42     |
| Jan. 26..... | Sunday     |                       |                |        |                       |                |        |
| Jan. 27..... | 12.02 a.m. | 0                     | -----          | 52     | 6                     | -----          | 46     |
| Jan. 28..... | 12.02 a.m. | 0                     | -----          | 52     | 0                     | -----          | 52     |
| Jan. 29..... | 12.02 a.m. | 0                     | -----          | 52     | 6                     | -----          | 46     |
| Jan. 30..... | 12.02 a.m. | 0                     | -----          | 52     | 22                    | -----          | 30     |
| Jan. 31..... | 12.02 a.m. | 4                     | -----          | 48     | 12                    | -----          | 40     |

Decisions Nos. 522, 523, 524 and 525, grade crossings; not printed. See end of volume.

DECISION No. 526.

IN THE MATTER OF THE APPLICATION OF PEOPLES WATER COMPANY, FOR AN ORDER AUTHORIZING ISSUE OF NOTES AND ISSUE AND PLEDGE OF BONDS AS COLLATERAL SECURITY THEREFOR.

Application No. 381.

*Decided March 23, 1913.*

Owing to unusual conditions, which are recited, applicant is permitted to issue bills payable from time to time for a period of one year in amounts not exceeding the aggregate sum of \$1,250,000 for the purpose of refunding outstanding bills payable in like amounts, the money represented thereby having been used for purposes properly subject to capitalization, and also is permitted to secure said issue by the pledge of its general mortgage bonds in an amount not to exceed \$3,125,000.

*Held*, While the bonds herein asked to be authorized are to be issued only for the purpose of being pledged as collateral, it should always be considered that such bonds may become outstanding through foreclosure of the pledge. Hence, consideration should be given to the security back of such bonds in the event that they do become outstanding. It appears from a showing made in this matter that there is a reasonable amount of property back of all of the bonds of applicant both outstanding and pledged as collateral.

*Edward W. Engs*, for Applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application for an order authorizing Peoples Water Company to issue its promissory notes from time to time during the period of one year next succeeding the date of the order in amounts not exceeding in the aggregate the sum of \$1,250,000, and authorizing the issue and pledge as security for the payment of said notes, applicant's general mortgage five per cent thirty-year gold bonds in such an amount as the Commission may direct.

The condition of the capitalization of applicant is set out in opinion and order No. 129, wherein applicant was authorized to issue its promissory notes for \$500,000, with interest at seven per cent per annum, and to issue \$1,500,000 face value of bonds to pledge as collateral security for the payment of said notes.

That order was made on the 20th day of July, 1912, and permitted such issue of notes and bonds for a period to and including the 30th day of October, 1912, and thereafter on the 18th day of October, 1912, an order was made extending said time to January 28, 1913, and

thereafter on the 15th day of January, 1913, an order was made extending said time to the 28th day of April, 1913.

At the time of the original order, applicant had outstanding promissory notes, aggregating \$500,000, payment of which it was expected would be demanded within ninety days. There was pledged as collateral security for the payment of these notes, bonds approximating \$1,500,000 face value. These notes and bonds were outstanding on March 23, 1912, at which time the Public Utilities Act went into effect, and it was necessary, in order to refund this indebtedness and to pledge bonds as security therefor, to obtain the authorization of this Commission. The Commission granted the request because it was shown that it involved a continuation of the then condition of the corporation, and that to compel the sale of the bonds for the purpose of paying off this indebtedness would work an injury to the corporation, because the bonds would bring a price not in excess of seventy-five per cent of their face value. Thereafter, it was found that payment on the notes outstanding was not demanded within the time fixed by the Commission, and the effective time was extended in order to take care of the notes as payment thereon was demanded.

It appears that applicant has outstanding notes, falling due within a year, of \$991,166, secured by bonds pledged as collateral, and that applicant has assumed to pay promissory notes in the amount of \$258,834, secured by mortgage on certain real property acquired by applicant, said indebtedness assumed by applicant being part of the purchase price of said property.

It is the purpose of applicant to refund, during the coming year, the first mentioned promissory notes, and to pay off the notes secured by mortgages aforesaid, by borrowing money through the issuance of the notes herein asked to be authorized, accompanied by the pledge of the bonds above mentioned.

Ordinarily, I would not recommend to the Commission that a utility corporation be allowed to finance itself by borrowing money on promissory notes with a pledge of its bonds in large amounts as collateral security for the payment thereof, but I find that this corporation is in a peculiar condition, warranting a departure from what would ordinarily be the rule.

Applicant has a water plant, supplying people with water in a number of towns and cities in the counties of Contra Costa and Alameda, and is the owner of a large amount of real estate in those counties.

Negotiations are pending with a number of these towns for the purchase of the plant, or part of the plant, of applicant. The trust deed under which the bonds of applicant are issued does not provide



that they may be called before their maturity. Upon a sale of the plant of applicant, or a portion thereof, to any town or community, it would be necessary to retire these bonds, upon terms fixed by the holders, and it might be that they would impose onerous conditions, resulting in an additional price necessary to be paid by the community purchasing such plant. There is the further consideration that these bonds could not be sold for anywhere near their par value, and as the granting of this application will not increase the indebtedness of this company nor add to the amount of bonds pledged as collateral, I do not feel that the Commission would be warranted at this time in refusing permission to applicant to issue its notes and bonds as requested.

However, this method of financing should not be allowed to continue indefinitely, and applicant should be called upon within a reasonable time to present to the Commission some comprehensive plan by which its present short term obligations shall be converted into long term obligations, or that such obligations be retired, keeping in view the possibility of a sale of the plant, or parts thereof, to the public.

The money represented by all of these obligations, except those secured by mortgage as aforesaid, has been used for the purpose of acquiring property, building and extending plant, etc., which is properly the subject of capitalization.

While the bonds herein asked to be authorized are to be issued only for the purpose of being pledged as collateral, it should always be considered that such bonds may become outstanding through foreclosure of the pledge. Hence, consideration should be given to the security back of such bonds in the event that they do become outstanding. It appears from a showing made in this matter, that there is a reasonable amount of property back of all of the bonds of applicant both outstanding and pledged as collateral. Therefore, I recommend that the application be granted, and I submit herewith the following form of order:

#### ORDER.

Application having been made to the Railroad Commission of the State of California by Peoples Water Company for an order authorizing the issue by said company of promissory notes for a sum not to exceed, in the aggregate, \$1,250,000, and authorizing said company to issue and pledge as collateral security for the payment of said promissory notes Peoples Water Company general mortgage five per cent thirty-three gold bonds, dated January 2, 1907, and secured by a mortgage and deed of trust executed by Peoples Water Company to Mercantile Trust Company of San Francisco, and a hearing having been duly held, and it appearing to the Commission that the money to be secured by the issue of said notes secured by the pledge of said bonds

as aforesaid, is necessary and reasonably required by said company for the discharge of its obligations, and that the purposes for which the proceeds to be derived from the issuance of said promissory notes secured by the pledge of said bonds are to be used, are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Peoples Water Company of its promissory notes bearing interest at not to exceed seven per cent per annum, for the aggregate sum of \$1,250,000, or so much thereof as may be necessary for the purposes herein stated, and the Railroad Commission of the State of California does hereby authorize the issue by Peoples Water Company of Peoples Water Company general mortgage five per cent thirty-year gold bonds in an amount not to exceed \$3,125,000, said bonds to be issued under and in pursuance of the terms of a mortgage and deed of trust dated January 2, 1907, executed by Peoples Water Company to Mercantile Trust Company of San Francisco, a copy of which said mortgage and deed of trust is on file with the application herein, upon the following conditions, and not otherwise:

1. Peoples Water Company shall realize the full face value of the promissory notes hereby authorized and the proceeds derived therefrom shall be used only for the purpose of paying its indebtedness, as evidenced by a list of obligations on file herein, reference to which is hereby made, and for the purpose of paying off and discharging the obligations evidenced by promissory notes and secured by mortgages on certain specified real property, which said promissory notes and mortgages are described in a list on file herein, to which reference is hereby made.

2. Said promissory notes shall bear interest not to exceed seven per cent per annum.

3. The bonds hereby authorized shall be issued and used solely as a pledge for securing the payment of the said promissory notes and they shall be issued as such security upon a basis of not to exceed two and one half times the face value of bonds to the face value of promissory notes, and immediately upon payment of said promissory notes, or the discharge of said bonds, or any part thereof, from the obligations of said pledge, said bonds shall be returned to the treasury of Peoples Water Company and shall not thereafter be issued except upon the order of the Railroad Commission of the State of California.

4. Said Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds derived from the issuance of said promissory notes hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make a verified report to the Commission in accordance

with the Commission's General Order No. 24, stating the disposition of such promissory notes during the preceding month, the moneys realized therefrom, and the use and application of such moneys, and a like report of the disposition of the bonds herein authorized to be issued and pledged.

5. The authority hereby given to issue said notes and said bonds shall apply only to notes and bonds issued by said company on or before the 30th day of March, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of March, 1913.

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DECISION No. 527.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS, SONOMA COUNTY, CALIFORNIA, FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A PRIVATE ROAD CROSSING ACROSS THE TRACKS OF NORTHWESTERN PACIFIC RAILROAD COMPANY IN OCEAN AND REDWOOD ROAD DISTRICTS, SONOMA COUNTY, CALIFORNIA.

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Application No. 415.

*Decided March 28, 1913.*

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Upon application for permission to construct a "private road" across the railroad at grade, it appearing entirely reasonable and practicable to avoid a grade crossing by passing the road under the railroad track through a trestle, a distance of about 100 feet northerly from the point selected for the grade crossing, without much additional expense.

*Held*, It is the policy of the Commission in such matters, in the interest of the safety of the public, to require that grade crossings of public roads with railroads be avoided wherever it is practicable to do so at a reasonable expense. Amendment to section 2694 of the Political Code, approved January 2, 1912, cited as authority. Order entered accordingly.

*C. F. Lea*, district attorney, for Board of Supervisors.

*Jos. Haber, Jr.*, for Northwestern Pacific Railroad Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

On February 11, 1913, board of supervisors, Sonoma County, California, filed with the Commission notice of petition for the construction of a "private road" in Ocean and Redwood road districts, Sonoma

County, California, across the track of the Northwestern Pacific Railroad Company, said petition having been filed with said board by William P. Jost. The petition was filed with you in pursuance of an act approved January 2, 1912, amending section 2694 of the Political Code of California, and a certified copy of the petition and of the order appointing viewers was attached. Although the act provides that the report of viewers appointed by the board shall be filed at the time the Commission's order is submitted to said board, the report had already been made and filed and a copy of same was submitted with the petition to the Commission.

After due notice a hearing was held in Santa Rosa, Sonoma County, California, on March 19, 1913, at which all interested parties were duly represented. The evidence submitted showed that the road as located by the viewers crossed the track of the Northwestern Pacific Railroad at grade. The field notes for the road prepared by the county surveyor and attached to the report of viewers showed that the road proposed to cross the railroad at grade at a point "thirty-four (34) feet southerly of the southerly side of the trestle crossing Russian River." The report of viewers, however, contained the following recommendation: "We recommend that the road be constructed under the railroad track." There seems to be some confusion, therefore, as to the exact recommendations of the board of viewers, as well as to the exact location of the crossing which it is desired that the Commission approve.

The witnesses both for the county and railroad company were unanimous in agreeing that it is entirely reasonable and practicable to avoid a grade crossing by passing the road under the railroad track through the west end of the Russian River trestle, a distance of about 100 feet northerly from the point selected for the grade crossing, without very much additional expense. The amount of such extra expense, however, could not be stated, as no survey has been made. Also it was testified that the construction of the highway under the trestle did not introduce grades that would be objectionable to traffic. At the point designated as the one most practicable for the undergrade crossing the standard overhead clearance of fourteen (14) feet above the roadway can be easily secured.

The exact location of the proposed crossing is not clear from the petition and maps filed. The petition describing the general route of the proposed road states as follows: "Beginning at a point on the westerly line of the southwest quarter of the southeast quarter, section 5, township 7 north, range 10 west, Mt. Diablo meridian. \* \* \* thence across Northwestern Pacific Railroad Company right of way and connect with River Boulevard." The map filed by the railroad company shows the crossing to be in the southeast quarter of southeast quarter of section 6. I have assumed that the map filed by the

railroad company is correct, as the field notes furnished by the county surveyor show that shortly after crossing the railroad, the highway passes "352.3 feet north of the corner of sections 5, 6, 7 and 8, township 7 north, range 10 west." This matter is, however, not very material, as I will recommend that the crossing be also designated with respect to the Russian River bridge of the railroad company.

The act approved January 2, 1912, amending section 2694 of the Political Code of California, provides that after a hearing the Commission shall, in an order, designate whether

"said proposed road shall, if constructed, be constructed across said track at grade or otherwise and shall determine and prescribe the manner including the particular point of crossing, and the terms of installation, operation and maintenance, use and protection of said crossing."

The evidence, together with the exhibits filed, shows that it is entirely reasonable and practicable to avoid a grade crossing of said road with the track of the Northwestern Pacific Railroad Company by changing the proposed point of crossing, which is for a crossing at grade, a distance of about one hundred (100) feet in a northerly direction where the crossing can be made under the south end of the trestle of said railroad company across Russian River. It is the policy of the Commission in such matters, in the interest of the safety of the public, to require that grade crossings of public roads with railroads be avoided wherever it is practicable to do so at a reasonable expense, and in view of this policy I recommend that an undergrade crossing be ordered at the point designated and submit the following form of order:

**ORDER.**

Board of supervisors, Sonoma County, California, having on February 11, 1913, filed with the Commission a petition for a private road crossing with the track of Northwestern Pacific Railroad Company in Ocean and Redwood road districts of said county, at a point near the south end of the trestle of said railroad company across Russian River in section 6, township 7 north, range 10 west, Mt. Diablo meridian, in said county, and a hearing having been held upon said petition in the city of Santa Rosa, Sonoma County, California, on March 19, 1913, at which all interested parties were duly represented, and testimony having been taken as to the practicability and reasonableness of avoiding a grade crossing, and it appearing that it is entirely reasonable and practicable to avoid a grade crossing of said private road with said railroad,

*It is hereby ordered* that permission be hereby granted board of supervisors, Sonoma County, California, to construct a private road across the track of Northwestern Pacific Railroad Company in Ocean and Redwood road districts of said county near the south end of the

trestle of said company across Russian River, subject to the following conditions, viz:

(1) The crossing shall be constructed under the track of said company at a point about sixty-five (65) feet north of the south end of said trestle.

(2) The entire expense of constructing the crossing together with the cost of its maintenance hereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by the board of supervisors of Sonoma County, California, or under its supervision by the party who is authorized to construct said road, the county being responsible for such maintenance.

(3) The crossing shall be constructed of a width not less than fourteen (14) feet under the trestle, with grades of approach not exceeding eight (8) per cent.

(4) The crossing shall be constructed under the trestle with an overhead clearance under the stringers thereof of not less than fourteen (14) feet.

(5) The Commission reserves the right to hereafter make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission, if, in its judgment, the public convenience and necessity demand.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of March, 1913.

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Decisions Nos. 528, 529, 530, 531 and 532, grade crossings: not printed. See end of volume.

DECISION No. 533.

LONG BEACH CHAMBER OF COMMERCE  
*vs.*  
PACIFIC ELECTRIC RAILWAY COMPANY.

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Case No. 281.

*Decided March 29, 1913.*

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Section 23, article XII, of the state constitution as amended October 10, 1911, providing that the powers of control over public utilities vested in municipal corporations shall remain unimpaired until divested in a specific manner, to wit, by a majority vote of the electors cast at an election to be held pursuant to laws to be passed thereafter by the legislature, and the legislature having provided, chapter 40, Statutes of 1911, extra session, a complete scheme for presenting to the voters the question of the retention or relinquishment of powers over utilities now vested in municipalities;

*Held.* That the powers now vested in municipalities over public utilities cannot be divested through the adoption of a charter amendment, but must be brought about under the scheme provided by the legislature for this purpose.

The petition herein dismissed, the complainant having asked the Commission to take certain action under a charter amendment wherein it was attempted to convey to the Commission certain jurisdiction over certain public utilities.

#### REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This action was heard on the 22d day of November, 1912, and thereafter counsel for both parties submitted briefs, the last of which briefs was filed on March 22, 1913.

On February 8, 1913, complainant herein filed a petition praying for a peremptory order to prevent defendant from laying "T" rails upon Pine avenue in the city of Long Beach, pending a decision of this suit by the Railroad Commission.

In this petition it was alleged, among other things, that on the 13th day of January, 1913, the city of Long Beach, at an election duly called and regularly held, voted to amend the city charter of the city of Long Beach by adding various amendments thereto, among them being amendment known as No. 30, a true copy of which is as follows:

"*Proposed Charter Amendment No. 30.*—That the charter of the city of Long Beach be amended by adding thereto another article to be known as article XVII, pertaining to common carriers and by repealing certain provisions of said charter in conflict therewith; said article XVII to read as follows:

#### ARTICLE XVII.

##### COMMON CARRIERS.

The Railroad Commission of the State of California is hereby granted and given all the powers, rights and jurisdiction over every common carrier (as defined in section 2 of the Public Utilities Act, approved December 23, 1911), operating within the city of Long Beach or serving the inhabitants thereof, conferred upon said Railroad Commission by the constitution, the Public Utilities Act, as approved December 23, 1911, and any other law or statute of the State of California.

The provisions of section three (3) of article I of the city charter of the city of Long Beach, and the provisions of section ten (10) of article VI of the city charter of the city of Long Beach, in so far as the same may be in conflict with, or contrary to this article pertaining to common carriers, are hereby expressly repealed."

It is further alleged that said charter amendment was at the time of filing said petition, and is now, a part of the organic law of the city of Long Beach. Complaint is made in said petition that defendant was preparing and would, unless enjoined by this Commission, lay "T"

rails upon Pine avenue in the city of Long Beach, and that said "T" rails would not be a proper kind of rails to lay in said street.

The prayer in said petition is that this Commission, either issue a peremptory order to defendant to refrain from laying said rails until the decision in this case by the Commission, or that this Commission decide whether or not the transfer of jurisdiction, attempted to be made by the charter amendment aforesaid, did, as a matter of law, transfer such jurisdiction to the Railroad Commission.

Shortly after filing said petition, the parties to this action joined in a stipulation, as follows, to wit:

"It is hereby stipulated and agreed by and between the parties to this proceeding that until the Railroad Commission has rendered its opinion and order in this proceeding the Pacific Electric Railway Company, defendant in this proceeding, shall refrain from laying on or along Pine avenue, or on or along any other street within the corporate limits of the city of Long Beach, California, any rails of the kind generally designated and understood by the term 'T' rails."

We are now asked by the Pacific Electric Railway Company to release said company from the effect of this stipulation on the ground that the city authorities of Long Beach insist that rails be laid in certain streets in the city of Long Beach, and threaten the arrest of the officials of said railway company unless said rails are laid immediately.

Therefore, I deem it proper that a determination be had as to whether or not jurisdiction over common carriers in the city of Long Beach was conferred upon this Commission by the adoption of the charter amendment above set out.

This Commission has heretofore held that incorporated cities and towns in the State of California retain such power over public utilities as was vested in them on the 23d of March, 1912, and as the city of Long Beach on that date had certain powers, specified in its charter, over common carriers in said city, it remains only to be considered whether such powers could be divested and transferred to the Railroad Commission by a charter amendment.

The constitution provides, section 23, article XII, as amended October 10, 1911:

"The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities in the State of California and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature and the right of the legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the Railroad



Commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; *provided, however*, that this section shall not affect such powers of control over any public utility vested in any city and county, or incorporated city or town, as at an election to be held pursuant to laws to be passed hereafter by the legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired \* \* \*."

The language contained in this section is clear and unequivocal to the effect that the powers of control over public utilities vested in municipal corporations shall remain unimpaired until divested in a specific way, to wit: By a majority vote of the electors cast at an election to be held pursuant to laws to be passed thereafter by the legislature.

There can be no room for doubt that the intent was first, to retain to the municipalities the powers over utilities then vested, and in addition to provide, through legislative enactment, an exclusive method of divesting such power. Had it been the intent to permit this divestment to be brought about by charter amendment, the constitution could have easily so provided.

In pursuance of this constitutional provision, the legislature did pass an act, chapter 40, Statutes of 1911, extra session, which is now in force, providing a complete scheme for presenting to the voters, the question of the retention or giving up of powers over utilities now vested in municipalities.

I recognize the rule to be that every doubt should be resolved in favor of an election held by the people, yet the results of an erroneous finding by this Commission that an election such as this was valid and served to divest this city of its power over utilities to the extent proposed, would be so serious in its result that I am constrained to recommend that the Commission hold that the powers now vested in municipalities over public utilities can not be divested through the adoption of a charter amendment, but must be brought about under the scheme provided by the legislature for this purpose.

I submit herewith the following form of order:

**ORDER.**

For the reasons given in the foregoing opinion, it is hereby ordered that the petition filed by the Long Beach Chamber of Commerce, complainant herein, wherein it is prayed that the Railroad Commission take certain action under a charter amendment wherein it was attempted

to convey to the Railroad Commission certain jurisdiction over certain public utilities, be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of March, 1913.

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DECISION No. 534.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY AND OAKLAND, ANTIOCH AND EASTERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING SAID CORPORATIONS TO CONSTRUCT, USE, AND OWN JOINTLY THE RAILROAD TRACKS ON THIRD STREET, BETWEEN I AND M STREETS, IN THE CITY OF SACRAMENTO, STATE OF CALIFORNIA, AND APPROVING AN AGREEMENT BETWEEN SAID CORPORATIONS FOR THE CONSTRUCTION AND OWNERSHIP THEREOF.

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Application No. 421.

*Decided March 28, 1913.*

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The Pacific Gas and Electric Company and the Oakland, Antioch and Eastern Railway, each having been granted franchises to construct and operate a double track railroad on Third street, from I to M streets, Sacramento, the former having exercised its rights of construction and the latter proposing to do so.

*Held*, That public interest and convenience will best be served by approval of the contract or agreement entered into between said companies for joint construction, ownership, and operation of a double track railroad between said points, provided that such approval shall not be considered as in any way passing upon matters properly within the jurisdiction of the city of Sacramento, or as of approving any part of said contract or of the construction and operation, under said contract, where such approval would in any manner interfere with the jurisdiction of the city.

*C. P. Cutten*, for Pacific Gas and Electric Company.

*Lester J. Hinsdale* and *Sam L. Naphtaly*, for Oakland, Antioch and Eastern Railway Company.

*R. T. McKisick*, city attorney, for intervenors, City of Sacramento.

REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

This application came on for hearing at Sacramento, Tuesday, March 25th, and the following facts were disclosed by the testimony:

The Pacific Gas and Electric Company owns and operates, under franchise from the city of Sacramento, California, a double track rail-

road on and over certain streets in the city of Sacramento, California, among others on Third street, from I to M streets. The Oakland, Antioch and Eastern Railway has been granted a franchise by the city of Sacramento to construct and operate a double track railroad on and over certain streets in Sacramento, among others on Third street, from I to M streets. The city attorney of Sacramento was present at the hearing and admitted that the franchises referred to had been granted to these companies, and were at this time effective.

The testimony showed that the Pacific Gas and Electric Company and the Oakland, Antioch and Eastern Railway, in view of the fact that the operation of four tracks on Third street would interfere very greatly with such use of the street as might be necessary for teams, have entered into an agreement, copy of which was filed with the application, by the terms of which agreement the Pacific Gas and Electric Company is to remove its double tracks on Third street, from I to M streets, and that thereafter the Pacific Gas and Electric Company and the Oakland, Antioch and Eastern Railway will construct, own, and operate jointly a double track railroad on said Third street, between said I and M streets.

Statements of the financial condition of each of the applicants had heretofore, in former proceedings, been filed with the Commission, and such statements, so far as necessary, were made a part of this proceeding. The contract or agreement as to the construction, joint ownership and joint operation of the tracks in question seems to be fair in terms, and, as was testified, is satisfactory to both applicants.

The city of Sacramento, represented by Mr. R. T. McKisick, city attorney, approved of the agreement for joint construction, ownership, and operation of the tracks, but objected to the Railroad Commission approving of anything in connection with this proceeding over which the municipality of Sacramento claimed jurisdiction.

Applicants, the Pacific Gas and Electric Company and the Oakland, Antioch and Eastern Railway, expressed a willingness to amend their agreement so as to clearly express and acknowledge by the terms of said agreement the jurisdiction of the city of Sacramento in all things comprehended in the agreement covered by such jurisdiction.

It is my judgment, and I find as a fact, that public interest and convenience will best be served by the Commission's approval of the contract or agreement providing for joint construction, ownership and operation by the Pacific Gas and Electric Company and the Oakland, Antioch and Eastern Railway of a double track railroad on Third street, between I and M streets, in the city of Sacramento, California, subject to such direction and restriction, as to the construction and operation of said double track road, as is given by the law to the municipality of Sacramento. I recommend the following order:

**ORDER.**

Whereas the Pacific Gas and Electric Company, a corporation, is at present operating a double track railroad on Third street, between I and M streets, in the city of Sacramento, California; and

Whereas said Pacific Gas and Electric Company desires to take up and remove said double track railroad and thereafter to jointly construct, own and operate a double track railroad on said Third street, between said I and M streets, in the city of Sacramento, California, with the Oakland, Antioch and Eastern Railway, which railway has a franchise from the city of Sacramento to build a double track railroad on said Third street between said I and M streets; and

Whereas the joint construction and operation by the Pacific Gas and Electric Company and the Oakland, Antioch and Eastern Railway of a double track railroad on said Third street, between said I and M streets, will do away with the necessity for said Oakland, Antioch and Eastern Railway building double tracks on said street and will result in there being but two tracks instead of four on and over said street; and

Whereas the city of Sacramento, through its city attorney, has expressed its approval of such construction and operation, providing all rights of direction and control of such construction and operation vested in said city are not interfered with,

*It is hereby ordered* that the Railroad Commission of the State of California, in so far as it has jurisdiction over the matter of the joint construction, ownership and operation of a double track railroad on Third street, between I and M streets, in the city of Sacramento, approves of the contract or agreement for such construction entered into by and between the Pacific Gas and Electric Company and the Oakland, Antioch and Eastern Railway on the eighth day of January, 1913, as per copy on file with this Commission, provided that nothing in this opinion or order shall be considered as in any way attempting to pass upon matters properly within the jurisdiction of the city of Sacramento, or as of approving any part of said contract or agreement or of the construction and operation, under said contract or agreement, where such approval would in any manner interfere with the jurisdiction of the city of Sacramento.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of March, 1913.

## DECISION No. 535.

TYNDALE PALMER, OTAY WATER LEAGUE ET AL.  
*vs.*  
SOUTHERN CALIFORNIA MOUNTAIN WATER COMPANY  
CITY OF SAN DIEGO, INTERVENOR.

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Case No. 261.*Decided March 29, 1913.*

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Application for rehearing denied, it being held (1) with respect to allegations of error of omission that the matters referred to were specifically excluded from the decision at the time of the hearing of which complainants were advised, had acquiesced in and had proceeded to the determination of the one issue, to wit, the question as to whether or not the complainants are entitled to water from the system of the Southern California Mountain Water Company; (2) with respect to the objections raised to the decision by complainants which are aimed at the matters which the Commission did decide, there is no merit.

*Tyndale Palmer*, for Complainants.

*H. E. Doolittle, H. L. Titus, and R. G. Dilworth*, for Defendant.

*W. R. Andrews*, city attorney, for Intervenor.

## REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

The above entitled case was decided on the 21st day of January, 1913. Thereafter, within the time allowed by law, the complainants asked for a rehearing, and the argument on such application was held at San Diego on the 3d day of March, 1913.

In the application for rehearing the complainants set out various specifications of error on the part of the Commission. The main specifications of error are based upon an assumed state of facts which does not exist. In the original complaint there were six grounds of relief set out, but with reference to this situation the Commission, in its opinion heretofore rendered, said:

“The main question to be decided being the right of the complainants to receive water from the system of the defendant, it is evident that it is advisable to determine this question before proceeding to fix the rates of defendant, because if it should be determined that the complainants are not entitled to water, the fixing of rates becomes unnecessary in this proceeding, while if they are so entitled, rates may thereafter be fixed with no added labor, the two inquiries being independent and unrelated. Hence at the hearing heretofore held the questions of rates and conditions of service were not considered, but their determination postponed until the main question shall have been decided.”

I can not understand why, under this state of the record, the complainants in asking for a rehearing, should urge error on the part of the Commission in rendering a decision with respect to matters which were specifically excluded from the decision, and which the complainants were advised at the time of the hearing would not be decided, and in which course of procedure the complainants acquiesced and proceeded to the determination of the one issue, as defined in the language just quoted. None of the other matters raised in the complaint have been decided. They are still pending, and their decision is unnecessary and certainly of no interest to these complainants unless they are entitled to water. The only thing that was decided, and in denying the application for rehearing the Commission adheres to such decision, was that the complainants under the present condition of the system are not entitled to take water therefrom. Such being the case, a decision on the other questions could do them no good and would be a mere idle act and would require the consumption of time by this Commission in a vain quest. It is, therefore, distinctly understood in this denial of the application for rehearing, as it was in the original opinion and order, that only the single issue is passed upon, leaving all other issues pending, namely, the question as to whether or not the complainants are entitled to water from this system.

As to the objections raised to the decision by the complainants which are aimed at the matters which the Commission did decide, I believe there is no merit. There are some misstatements of what the Commission did decide, but Mr. Palmer, attorney for the complainants, makes the reasonable explanation that the record being large and the time for getting up his application being brief, any such mistakes in the statement of what the record discloses are not intentional. Inasmuch as, if resort is had to the Supreme Court, the record and not what the complainants in their application for rehearing say is the record, and the opinion and order and not the complainants' interpretation of such opinion and order will be considered as properly determining what the Commission did decide, I do not think it necessary to review the specifications of error set up by complainants to show wherein they are incorrect.

Having nothing presented to me that at all changes my opinion as to the proper disposition of this case, I believe that the application should be denied, and I submit the following order:

#### ORDER.

Complainants herein having filed their complaint against defendant herein and the city of San Diego having intervened, and a hearing having been held and a decision rendered on the 21st day of January, 1913, and thereafter, within the time allowed by law, an application having been filed for rehearing, and a hearing having been held on

such application, and the Commission being fully apprised in the premises,

*It is hereby ordered* that the application for rehearing be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day March, 1913.

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DECISION No. 536.

IN THE MATTER OF THE APPLICATION OF JAMES A. MURRAY AND ED FLETCHER FOR AN ORDER AUTHORIZING AND PERMITTING AN INCREASE IN THE RENTALS, TOLLS AND CHARGES FOR WATER FURNISHED BY THEM AND SERVICE RENDERED BY THEM IN FURNISHING WATER IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

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Application No. 118.

*Decided March 28, 1913.*

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Applicants, owning and operating a water system, petition for permission to increase rates. The system was constructed by San Diego Flume Company about 1889, and is capable of yielding 256 miner's inches of water at the head of the flume. The flume company, however, entered into contracts for the delivery of 473.09 miner's inches of which 49.385 inches are being supplied to urban users in the town of La Mesa and the city of East San Diego, the latter municipality having been incorporated since the hearing herein. The remainder of the supply is sold under contract at various rates to consumers mainly for irrigation purposes. On February 24, 1891, and upon petition as required by the statute of 1885, the board of supervisors of San Diego County fixed a water rate for said company at \$120 per miner's inch per annum, but the company did not furnish water at this rate but at a less rate which is provided for in the various contracts. Applicants acquired the system by purchase June 1, 1910, subject to all said contracts, water rights, etc., and assumed to perform all existing contracts to the same extent as their predecessor could be required to perform them. It was stipulated in the record that the question of service, as well as rates, should be decided.

Prior to March 23, 1912, the rental and distribution of water, outside of municipalities, was subject to regulation by county boards of supervisors under provisions of an act of the legislature passed in 1885 pursuant to article XIV of the state constitution, as adopted 1879, and also pursuant to an amendment to said act passed in 1897 (Statutes of 1897, page 49).

The powers of the boards of supervisors were conferred upon the Railroad Commission and enlarged by amendments to the constitution, adopted in 1911, and the provisions of the Public Utilities Act, effective March 23, 1912.

In opposition to the jurisdiction of the Commission to grant the relief sought, appeared the customers of applicants using water for irrigation purposes under contracts, on the ground that, as to them, action had been taken before the amendment to the constitution and the passage of the Public Utilities Act which prevented the legislature from exercising its admitted authority in the absence of such action. In other words, that such contracts worked a limitation upon the authority of the Commission.

I. Upon the issue involving the effect upon the power of the Commission to fix rates of a public utility water company of contracts entered into since the adoption of the constitution of 1879 and before the amendment to the constitution of 1911 and the passage of the Public Utilities Act in 1912, *Held*, (1) the Commission has the right to fix the rates which may be charged by the applicants and prevent deviations from such rates, contracts to the contrary notwithstanding, and by reason of the fact that this same question is continually coming up with reference to utilities, other than water companies, a similar conclusion is announced with reference to all utilities. No contract affecting the relationship which exists between a public utility and its patrons, or in any other way affecting the public, is of any effect in the face of this Commission's authority, except this Commission shall approve the same as a rate, which it has a right to do under the Public Utilities Act, providing such action will not bring about discrimination; (2) contracts entered into in good faith between public utilities and their patrons that are not forced or compelled in any way, and are based upon an adequate consideration, should be adopted so far as is consistent with adequate regulation as the basis for the rates for the service performed by the public utility for its patrons. But at any time when changed conditions bring about the necessity of a change in rate, the Commission should exercise its undoubted authority to depart from the conditions of any such contract, however proper such contract might have been in its inception.

The rules laid down by courts of other western states, particularly Arizona and Colorado, and relied upon by protestants herein, regarded as inapplicable to the question of the validity of a water contract under the California constitution as distinguished from any public utility contract with consumers, not so much because of the inherent difference in the organic or constitutional provisions in these western states, but by reason of the different interpretation placed upon such constitutional provisions by the courts of last resort in these states, but such decisions regarded as bearing on the general question of the power of public utilities to contract and the effect of change of law so as to make such contracts, though lawful when made, unlawful and unenforceable after the state has exercised its powers of regulation. The basis for the holdings given above found in the decisions of the Supreme Court of this State and the Supreme Court of the United States:

**POWER OF GOVERNMENT TO CONTROL PROPERTY DEVOTED TO THE PUBLIC USE—THE USE OF WATER IS A PUBLIC USE—PRINCIPLE APPLICABLE TO REGULATION OF OTHER UTILITIES APPLICABLE ALSO TO APPLICANTS.** The power to fix rates of a public utility is in the nature of the police power. At least it is the power of government to control property devoted to the public use. (*Munn vs Illinois*, 94 U. S. 113). Article XIV of the constitution of this State provides that the use of water is a public use and the decisions on this point to the same effect are so numerous and unanimous, both of the Supreme Court of this State and the Supreme Court of the United States, that it is unnecessary to discuss this further and we proceed upon the theory that the public use, discussed in the *Munn* case, and doctrine announced there, to which that court has consistently adhered up to the present time, is applicable to a water corporation such as the applicants herein, having appropriated water for sale, rental, and distribution, and that the same principle, applicable to the regulation of other utilities, applies with equal force to the regulation of the applicants. (*Fall Brook Irrigation District vs. Bradley*, 164 U. S. 112; *San Diego Land & Town Company vs. National City*, 174 U. S. 739; *Smith vs. Ames*, 164 U. S. 466.)

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**POWER OF WATER COMPANIES TO CONTRACT—PREVIOUS LIMITATION ON EXERCISE OF SAID REGULATION OF RATES—AUTHORITY OF BOARDS OF SUPERVISORS.**

Under article XIV of the state constitution and the statutes of 1885, passed pursuant thereto, and the amendments to this statute, the boards of supervisors were empowered only to fix maximum rates, and until they had fixed such maximum rates the parties are free to contract, and after such maximum rates have been fixed the parties are free to contract within such maximum rates. (*Fresno Canal & Irrigation Company vs. Park*, 129 Cal. 437.)

**FUNCTION OF CONTRACTS—STATE MAY SUBSTITUTE RATES FOR RATES FIXED BY CONTRACT.**

The right of a public utility water corporation to fix a rate by contract is subject to the power of the State to substitute a rate fixed by the properly constituted authorities for the rate agreed upon by contract, and the sole function of contracts between a water company and its consumers is to fix the relationship of the parties before the public authorities shall have acted, and in addition thereto, probably would have the effect, as to the land involved, to "establish its status as land permanently entitled to share in the public use." (*San Diego L. & T. Co. vs. National City*, 74 Fed. 79, and cases cited; *Laning vs. Osborne*, 76 Fed. 319, and cases cited; *Mandel vs. S. D. L. and T. Co.* 89 Fed. 295; *Boise City L. and L. Co. vs. Clark*, 131 Fed. 415; *Leavitt vs. Lassen Irrigation Co.*, 157 Cal. 82; *Lassen Irrigation Co. vs. Long*, 157 Cal. 94; *Imperial Water Company No. 5 vs. Holabird*, 197 Fed. 4.)

**IMPAIRMENT OF OBLIGATION—CONTRACTS SUBORDINATE TO POWERS OF GOVERNMENT.**

It appears sufficiently from what has been stated herein and from the cases herein reviewed that it is not violative of the provision of the constitution of the United States (article I, section 10) which denies to the states the power to impair the obligation of contracts, for a state to fix a rate which shall apply to a public utility, such as a water company, which conflicts with the rate agreed upon by such utility and its consumers in a contract valid when made and if this rule can be invoked in reference to a water company, it, of course, can be equally well invoked in the case of any other utility. The rule is well established that contracts are always made subject and subordinate to the powers of government, and such contracts are entered into subject to the full legal effect of this rule, and it is no impairment thereof for the state, in the proper exercise of its authority, to disregard them. (*Stanislaus vs. San Joaquin and K. R. C. Co.*, 192 U. S. 202; *Home Telephone and Telegraph Co. vs. Los Angeles*, 211 U. S. 265; *Legal Tender cases*, 12 Wall. 550; *Louisville and Nashville Railroad Co. vs. Mottley*, 219 U. S. 467.) Contracts such as these are entered into by the parties in full legal contemplation of the power of the State to exercise its authority and, although the State has not exercised its authority, such power to exercise such authority is in effect a condition subsequent as much a part of the contract as though written therein by the parties, and, hence, of course, on the happening of the condition subsequent the effect of the contract, as against the power of the State to regulate, becomes nil.

**SURRENDER OF GOVERNMENT POWER—EFFECT OF STATUTES—CONSTRUCTION OF AMENDMENT OF 1897.**

A state can not be construed as having surrendered its authority to regulate utilities unless it is made plainly to appear affirmatively that either the State has done this or has empowered a legal subdivision so to do and such legal subdivision has acted. The statutes passed pursuant to article XIV of the constitution up to 1909 could not be construed to amount to a contract on the part of the State to waive its admitted right to regulate these agencies. (*Crow vs. San Joaquin and K. R. C. and I. Co.*, 130 Cal. 309; *Leavitt vs. Lassen Irrigation Co.*, 157 Cal. 82; *Hildreth vs. Montecito Creek Co.*, 139 Cal. 22; *Stanislaus vs. San Joaquin and K. R. C. Co.*, 192 U. S. 202.) The only language which could possibly be construed to have any bearing upon this subject is that in the amendment to the act of 1885 passed in 1897. Independent of the suggestion of the Supreme Court in the *Leavitt* case that this language is unconstitutional and giving it all of the effect which, as a valid statute, it could have, it goes no further than to say that the act of 1885 does

not prohibit or invalidate contracts, but does not, by implication or otherwise, carry with it the inference that that act does validate or sanction contracts. If it has any effect at all, it merely subtracts whatever effectiveness the statutes of 1885 had against these contracts, and leaves the subject in the same condition, with reference to the validity or invalidity of such contracts, as though no statute had been passed at all, and we must rely, as the Supreme Court of this State does in the *Leavitt* case, upon article XIV of the constitution.

- II. Upon the issues involving the jurisdiction of the Commission over rentals and distribution of water delivered to urban users in La Mesa and East San Diego and generally, *Held*, (1) under section 23, article XII of the constitution and section 82 of the Public Utilities Act the cities are limited to the power which they possessed on the 23d day of March, 1912, and no extension of this power may be had. The city of East San Diego, not being in existence on this date, is incorporated as a city of the sixth class at a time when such cities are limited to the powers over utilities which they had vested in them on the 23d day of March, 1912, which, of course, as to this city was nil; (2) this Commission has ample authority to fix any charge which any public utility shall make for its commodity and there can not be found any authority in the constitution or the statutes of this State for exempting a wholesale rate of a public utility from the jurisdiction of this Commission. Therefore, while admittedly the Commission, under the authority of *McFadden vs. Los Angeles* (74 Cal. 571), has no authority to fix the rate which the La Mesa Mutual Water Company shall charge to its stockholders, if it is in fact a mutual company, yet this does not at all affect the power of the Commission to regulate the relationship which exists between this corporation as a consumer of water and the public utility which furnishes the same; (3) all of the rates and all of the conditions of service of the applicants are properly subject to the jurisdiction of this Commission.

- III. Upon the question of rates, consideration given to the general principles established in *Lexington Turnpike vs. Sanford*, 164 U. S. 578; *Osborne vs. San Diego Land and Town Company*, 178 U. S. 962; *San Diego Land and Town Company vs. Jasper*, 189 U. S. 439; *Stanislaus vs. San Joaquin and Kings River Canal and Irrigation Company*, 192 U. S. 202; *Knorrville Water Company*, 212 U. S. 1, and *Wilcox vs. Consolidated Gas Company*, 212 U. S. 19.

The doctrine which results from these cases is that the present fair value of the property being used by a public utility for the convenience of the public is the basis upon which rates are to be fixed, and in the *Ames* case it is held that original cost of construction, the amount expended in permanent improvements, the amount and market value of stocks and bonds, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates and the sum required to meet operating expenses, are all matters for consideration "and are to be given such weight as may be just and right in each case." The *Jasper* case also in addition to this, holds that the price at which a plant has been bought at a foreclosure sale is evidence to be considered in a rate fixing inquiry.

*Held*, In order for rates of a public utility to be just to such utility, they should be sufficient, after caring for cost of operation, maintenance, and depreciation, to yield a reasonable return upon the present fair value of the property devoted to the public use. The nearest and fairest approximation which may be made to a correct "value" upon which a public utility shall be allowed to earn is the amount of the investment wisely made and this view is not at all in conflict with the position of the courts in this regard. The elements which we have been directed to consider may all well be secondary evidence of this ultimate fact. However this may be, this Commission in every rate fixing inquiry should give careful consideration to each of the elements prescribed and should give that weight to each in each case to which we conscientiously think in that case it is entitled with the hope that thereby we may arrive at such fair value of the property devoted to the public use as is just and fair to the utility and at the same time not oppressive to the consumer.

IV. Upon the question of service, the Commission found as a fact that applicants have a supply of water in their control devoted to public use adequate to furnish all the necessary demands of those for whose benefit such public use was created, but that, by reason of inadequate facilities, applicants are wasting said water and are not properly or adequately supplying the demands of their consumers: that the facilities for furnishing a supply of water to such consumers and the supply of water available under the present condition of the system is inadequate, insufficient, unjust and unreasonable; that an increase of the net safe yield of the system at least  $33\frac{1}{3}$  per cent over its present safe supply is necessary to render its facilities and service adequate, sufficient, just and reasonable. Basing its order upon said findings, applicant is directed, without delay, to construct a closed flume in lieu of the one used and to take steps to increase, by  $33\frac{1}{3}$  per cent, the available supply of water.

Applicants having contended that they are only required to furnish to their consumers gravity water, basing such contention mainly upon the contracts, *Held*, such contention is not correct. Applicants have a certain amount of water in their control at the present time largely in excess of the amount which, with reasonable losses, can be devoted to beneficial use. Their only warrant to the control of this water is that they devote it to beneficial use, and whether they deliver it to consumers as it runs down from the natural flow or withhold it in impounding reservoirs either above or below its consumers, their present warrant for its reservation is that they supply their present consumers and they certainly had no right to withhold it at this date because they expect to serve other consumers below the La Mesa reservoir, because those other consumers under the law are not yet admitted into the class for which this use is created. (See *Tyndale Palmer vs. Southern California Mountain Water Company*, decided January 21, 1913, and authorities therein cited.) They not only must use every endeavor to apportion this water ratable to the consumers in times of scarcity (*Learitt vs. Lassen, supra*), but under the present condition of the system they must not admit any more consumers to the class for which the use is created, except such consumers be domestic consumers, within the territory already described which has been held as beneficiary of the public use, and in such territory they must only add domestic consumers up to the minimum safe yield represented by the number of inches of water attributable to such territory.

Application granted upon findings of fact, summarized in the order, respecting the fair value of the property, reasonable cost of operation and maintenance, reasonable allowance for depreciation and fair return upon the investment.

A. H. Sweet, for Applicants.

Haines & Haines, for certain protestants taking water for irrigating purposes.

D. G. Gordon, for certain protestants taking water for irrigating purposes.

Crouch & Harris, for certain protestants, domestic consumers in the suburbs of San Diego.

#### REPORT OF THE COMMISSION.

ESHELMAN, *Commissioner*.

The application herein was filed on the twenty-fifth day of June, 1912, and applies for an order authorizing applicants to increase the rates for water to be charged to their consumers in the county of San Diego. While the application is limited to the question of the reasonableness of the rates charged, yet at the hearing which began on the 8th day of July, 1912, it was agreed by the applicants that the ques-

tion of service might also be considered by the Commission, and it was stipulated in the record that the entire question of the rates and service of the applicants should be considered, and a decision rendered thereon, and the hearing proceeded upon this theory and evidence was introduced touching these matters. After the completion of the hearing the parties asked and were granted time to submit briefs and hence the case was not finally submitted until March 1, 1913.

The domestic consumers and the consumers taking water for irrigation purposes were separately represented at the hearing, and while both opposed the application they did so on different grounds and asked for different relief. The owners of riparian land within the watershed of the San Diego River below the point of diversion of the applicant's system also appeared informally, but did not present any evidence and are not properly parties to this proceeding.

The issues in this case are so complicated that quite an extensive review of the facts will be necessary. The San Diego Flume Company was incorporated May 14, 1886, with a capital stock of \$1,000,000. Thereafter, on the 25th day of May, 1895, its articles of incorporation were amended, but both its original and amended articles bring it within the definition of a water corporation as defined in the Public Utilities Act, and it is agreed by all of the parties that it is a public utility and subject to the jurisdiction of this Commission. Certain filings were made upon the water of the San Diego River, and other streams in San Diego County by the predecessors in interest of the applicants, and all of the present consumers are within the places of designated use as set out in the notices of appropriation. The total amount of water filed upon is in the neighborhood of 18,400 miner's inches, but not nearly such an amount has ever been devoted to any public use. The corporation began the construction of its water system in 1887 and completed it in the latter part of the year 1889 by the construction of a wooden flume capable of carrying in the neighborhood of 5,000 inches of water, extending from the diverting dam on Boulder Creek, a branch of the San Diego River, to the Eucalyptus reservoir, a distance of 35 $\frac{1}{4}$  miles, and the construction of a reservoir known as the Cuyamaca reservoir in the mountains above the point of diversion. Later the La Mesa reservoir at the lower end of the system and the Murray Hill reservoir were added. While the flume, as originally constructed, was capable of conveying approximately 5,000 inches of water, still a considerable proportion of the filings were allowed to lapse, and while the evidence is conflicting on this point it now seems that not more than 3,000 or 3,500 inches can be developed in the system, and the net safe yield under the system as it now exists is 256 miner's inches at the head of the flume. The company has served approximately 4,000 acres of land in addition to its domestic consumers, and there are approximately

25,000 acres susceptible of irrigation from the system, provided a sufficient quantity of water may be impounded.

The main objection of the irrigation consumers is based upon the fact that certain contracts were entered into by the flume company, predecessor of the present owners.

On June 1, 1910, the system was conveyed to the applicants herein for a consideration of \$150,000 and in the deed of conveyance it is provided as follows:

"This property, water system, franchises, easements, et cetera, are sold subject to all water right contracts, or contracts to rent, sell, supply, or distribute water hitherto made by the party of the first part (San Diego Flume Company), whether such contracts refer to water already furnished or hereafter to be furnished.

"And the said party of the first part hereby assigns, conveys, transfers and sets over to the party of the second part (James A. Murray), all its right, title, claim, interest or estate in or to such contracts and all of them, and substitutes and places the party of the second part in the place and stead of the party of the first part in or to such water right contracts, and assigns, transfers and sets over to the second party all liens, or claims of lien, and all other means provided for the enforcement of said contracts which the party of the first part may have, and the second party hereby assumes and agrees to perform all such contracts to the same extent and in the same manner as the party of the first part is now bound to perform the same; provided, however, that such assignment and transfer shall in no way affect the right of the grantor to enforce all equitable or legal remedies to compel payment of any balance due or unpaid for water rentals, or for the amount agreed to be paid for the water rights specified in such contracts.

"It is further understood and agreed that there are now in existence contracts to supply water covering about 625 miner's inches of water at various rentals."

After the transfer of the property to Murray, he in turn transferred an undivided one sixth interest to Fletcher, and the San Diego Flume Company, a corporation, has now forfeited its charter and we have a system in control of these two individuals, applicants herein.

The protestants who are irrigators of land and who have taken their water heretofore under the terms of these contracts set up the claim that as to them this Commission has no authority as far as fixing the rate is concerned for which they shall receive water, at least in so far as such rates shall be in excess of an amount necessary to provide for depreciation upon the system and the payment of operating expenses. Their position is that by these contracts the San Diego Flume Company and the applicants herein, by assuming them, have commuted their right to any profit to be realized from the sale of water to those taking it under contracts.

All of the contracts were submitted in evidence, and on account of the strong insistence upon the correctness of their position by these protestants it will be necessary briefly to outline the provisions of such contracts.

The San Diego Flume Company and the applicants, as its successors, have never furnished water for irrigation, except under the terms of the contracts, but have furnished without contracts, urban users near San Diego for domestic purposes. On February 24, 1891, on the petition of a number of inhabitants, as required by statute, the board of supervisors of San Diego County fixed a water rate for this company at \$120 per miner's inch per annum, but the company, as has already been said, did not furnish water at this rate but continued to furnish it at the less rate which is provided for in the various contracts.

There is a substantial agreement between the parties as to the terms and history of these contracts, the controversy being over their legal effect. Messrs. Haines & Haines in their brief have very carefully outlined them, and I find from an inspection of the contracts themselves that their outline is substantially correct.

(1) *Contracts for water for irrigation at \$65 per miner's inch per annum.*

It appears that in 1886 the San Diego Flume Company entered into a contract with Easton, Frink and Wilde whereby these parties granted to the company a right of way fifty feet wide across what is known as the "S" tract in the El Cajon Valley, and in return therefor, were given a right to receive 200 miner's inches of water at the rate of one inch for every 15 acres to be irrigated on paying for such water right at the rate of \$10 per acre, which would amount to \$150 per miner's inch, and in addition thereto they were to pay the annual charges fixed by the board of supervisors of San Diego County. In 1891, Easton, Frink and Wilde relinquished 50 inches of the original 200 and agreed to take the rest at an annual rental of \$65 per inch, and subsequently it was arranged that each of the three parties, Easton, Frink and Wilde, should take in severally 50 inches and be responsible for the paying for the same. Frink, however, did not pay for his 50 inches, which left 100 inches for which the water right was treated as subsisting, and this 100 inches was divided up and sold to various successors of Wilde and Easton respectively, the consideration for the contract being paid in each instance directly to the flume company by Wilde or Easton or by the person designated by them, an arrangement which was permitted under the contract. It appears from the evidence that 56.51 inches of water is now being supplied under the terms of Easton, Frink and Wilde's contract at \$65 per inch per annum, and that 43.49 inches, although originally supplied under the terms of this contract, is now being supplied under other contracts which by agreement have been substituted for the original con-

tracts. Hence the situation now is that 56.51 miner's inches is being supplied at \$65 per inch per annum for which an initial consideration for the so-called "water right" of \$150 per miner's inch was paid, together with a right of way for a flume fifty feet wide across the "S" tract which, as it appears from the evidence, is about 15 miles long.

(2) *Contract for water for irrigation at \$60 per miner's inch per annum.*

There were 253.835 miner's inches contracted for at \$60 per miner's inch per annum with various initial charges ranging from \$600 to \$1,000 per miner's inch. As to some of these users this is the original contract, as to others this contract is substituted for a previous contract wherein in some cases they had paid a smaller initial charge and were obliged to pay a higher annual charge, while as to others the opposite was the case.

(3) *Contract for water for irrigation supplied at \$30 per miner's inch per annum.*

There are 67.83 miner's inches of water now being furnished at \$30 per miner's inch per annum. This rate grew out of the following circumstances. The flume company secured control of the La Mesa Colony tract and sold out the land therein in ten acre lots, and to the purchaser of each of said ten acre tracts the company gave the right to an inch of water from the system at an annual charge of \$30 per inch and the further right to a lot in the town of La Mesa. These sales were made for a consideration of \$1,000, ordinarily \$500 cash and \$500 one year thereafter, and without regard to any particular tract or lot, and the tracts and lots were thereafter apportioned by lot. Each of the purchasers got as grantee, a deed in which Bryant Howard and R. A. Thomas and the flume company were named as co-grantors and which undertakes to convey a ten acre tract, the right to take an inch of water at the \$30 rate and a town lot. By reason of the slightly different conditions surrounding the original delivery of this water to what is known as the "La Mesa Colony" I insert the form of conveyance, which is quite brief:

*"This indenture witnesseth:* That Bryant Howard and R. A. Thomas, trustees of the La Mesa Colony tract, and the San Diego Flume Company, for and in consideration of the sum of five hundred dollars to them in hand paid, and five hundred dollars to be paid, do hereby grant, sell and convey unto — the following real estate situate in the county of San Diego, and in the State of California, to wit: Lot numbered — as designated on the plat of La Mesa Colony as surveyed and platted by William E. Fitzhugh, civil engineer, now on file in the recorder's office in said county, containing — acres; also lot numbered — in block numbered — in the town of La Mesa as designated on said plat, together with the right to take water from the pipes or flumes of

said company at the rate of one miner's inch measured under a four-inch pressure (for irrigation and domestic purposes) for said tract numbered — subject to the payment of thirty (\$30) dollars per inch per annum, water rates therefor, and to such rules and regulations in regard to tapping mains or flumes, shortage, wastage, use of water, and payment for same, as the company may adopt for general application to consumers. But the full right of way is hereby reserved for all the pipes or aqueducts of said company.

“And said company hereby agrees to convey water in its pipes or flumes to the edge of said tract numbered — within a reasonable time after the completion of its main flume line to its reservoir about eight miles east of the city of San Diego, and near said La Mesa Colony.

“This grant is made upon the express condition that the promissory note for the sum of \$500 of even date herewith, and due in one year and drawing 8 per cent interest, given by the grantee herein, for the balance due on the purchase money to be paid as aforesaid, is fully paid, the said trustees on behalf of said company, and the said company on its own behalf, shall retain a vendor's lien on the real estate herein described which may be enforced in accordance with law.”

(4) *Water supplied for irrigation at \$45 per miner's inch per annum.*

There are 3.62 inches of water being furnished at \$45 per miner's inch per annum. This contract grew out of a contract between the flume company and the Teralta Land and Water Company originally for 28 inches of water. The initial consideration in addition to the \$45 annual rate was \$28,000 together with a grant of certain rights of way. It is impossible to trace the remaining 24.38 inches covered by this contract. From the contract book it would appear that some of it by mutual arrangement was subsequently transmuted to water furnished under contracts of other forms and at different rates, but all that we can find definitely from the evidence is that this 3.62 inches of water now being furnished was furnished originally under the terms of the Teralta Land and Water Company contract.

(5) *Water for domestic use furnished at \$600 per annum with a charge for excess at the rate of 10 cents per thousand gallons.*

On the 1st day of July, 1909, the San Diego Flume Company entered into a contract with the Columbian Realty Company wherein it agreed to furnish to said company 9.875 inches of water to be delivered to the Columbian Realty Company at a place on El Cajon boulevard at a short distance east of what is known as the “El Teralta Schoolhouse” for use upon certain suburban property near San Diego. The realty company was to pay to the flume company \$600 annually or \$50 per month for this amount of water, which amounts to a trifle over \$60 per inch per annum, and if it should use water in excess thereof the excess should be paid for



at the rate of 10 cents per thousand gallons which is at the rate of \$473.04 per inch per annum. The Columbian Realty Company surrendered certain contracts covering approximately 5.80 inches, a part of which it had secured through the Teralta Land and Water Company (form (4) herein) and a part for which it was obligated to pay \$60 per miner's inch per annum. The Columbian Realty Company was selling off its lots in this territory and distributing the water to its purchasers for domestic purposes.

(6) *Water supplied for domestic use at \$435 per annum with a charge for excess at the rate of 5 cents per thousand gallons.*

This water is covered by a contract entered into in January, 1910, between the flume company and the El Cerrito Water Company comprising 14.50 inches of water for which it was to pay \$36.25 per month or \$435 per annum, which amounts to \$30 per inch per annum, and any in excess of this amount it was to pay for at 5 cents per thousand gallons which is at a rate of \$236.52 per inch per annum. In consideration for this contract the El Cerrito Water Company surrendered contracts for water which it had acquired from various individuals owning the land upon which this company at this time desired to distribute water, and was in effect a substitution for contracts that had theretofore been entered into covering the same land.

(7) *Water supplied for domestic use at the rate of 6 cents per thousand gallons with a minimum charge of \$576 per annum.*

This is a contract entered into in 1907 between the San Diego Flume Company and the La Mesa Mutual Water Company, a corporation. Under this contract the Mutual Company is given a right to a maximum of 20 miner's inches of water at 6 cents per thousand gallons, which is at a rate of \$283.82 per inch per annum, but it is provided that it shall pay a minimum of \$48 per month or \$576 per annum, which means that it must pay for a minimum of about two inches. The right to use the water is limited to certain described land.

(8) *Water for irrigation supplied at the rate of \$200 per annum.*

This is a contract between Levi Chase and the flume company for 2.25 inches of water to be used between the 1st of May and the 1st of November at \$200 per annum for the entire amount, which amounts to \$88.80 per inch for these months, with the further right in case it is desired by the consumer to take water after November 1st to pay for the same at a proportionate rate. In consideration for this contract Chase granted the company a right of way for its flume fifty feet wide over his ranch. This contract has been in litigation and was reviewed by the Supreme Court of this State in *San Diego Flume Company vs. Chase*, 87 Cal. 561. Inasmuch as it is in evidence that the months designated are ordinarily the irrigating months this amounts practically to an annual rate of \$88.80 per inch.

(9) *Water supplied for irrigation at \$72 per inch per annum.*

There are two contracts outstanding of this form for small amounts of water aggregating .16 of an inch. The annual payment is to be at the rate of \$72 per inch, but it has been impossible to ascertain the initial consideration paid by the water user.

In addition to these nine forms of contract the flume company on December 31, 1909, entered into a contract with the Western Investment Company which recites that the said Western Investment Company having succeeded to 4.80 inches of water rights surrendered the same to the flume company, which obligated itself thereupon to furnish an equivalent of 5 miner's inches, being 64,800 gallons every twenty-four hours for use within a portion of Normal Heights and a portion of Teralta Heights at 5 cents per thousand gallons for that amount and 10 cents per thousand gallons for all consumed in excess of this amount. This contract was replaced by one made by the applicants (now styling themselves Cuyamaca Water Company), on May 6, 1912, with the Western Investment Company. In this modified contract it is provided that all residents and property owners in the whole of Normal Heights, a tract of about 1,000 acres, may be served and in addition to this a tract known as Bonnie Brae as well as blocks A, B, C and D of Teralta Heights included in the former contract. The amount of water is to be "adequate and not limited to five inches" and is to be at the flat rate of 25 cents per thousand gallons, the distributing system of the Western Investment Company to be turned over to the applicants.

The proprietors of Kensington Park, a suburban tract of 116 acres, who had no water rights for their land arranged in May, 1910, with the flume company for supplying water to be delivered into a distributing system, which such proprietors owned, at 10 cents per thousand gallons. Murray and Fletcher, after they acquired the system, entered into a new contract to supply water to Kensington Park at 25 cents per thousand gallons, which is equivalent to \$1,182.60 per inch per annum, without regard to the amount needed, and the Kensington Park distributing system was turned over to them. In addition to the contracts here reviewed the flume company obligated itself to furnish 40 miner's inches of water to lands in the El Capitan Indian Reservation free of all charges for maintenance and operation in return for a right of way for the flume through this reservation. This water is to be furnished each season between May 1st and November 1st.

While the exact total amount of water rights that have been sold by the flume company can not definitely be determined from the evidence, it is in evidence that in addition to the amount herein disclosed it entered into contracts to deliver about 194 miner's inches in excess of the amount that it has ever delivered under which contracts no water

has ever been delivered, and assuming that it actually delivers the 40 miner's inches to the Indian Reservation we have present consumers:

|   |         |                |
|---|---------|----------------|
| Under contract form No. 1.....  | 56.51   | miner's inches |
| Under contract form No. 2.....  | 253.835 | miner's inches |
| Under contract form No. 3.....  | 67.33   | miner's inches |
| Under contract form No. 4.....  | 3.620   | miner's inches |
| Under contract form No. 5.....  | 9.875   | miner's inches |
| Under contract form No. 6.....  | 14.51   | miner's inches |
| Under contract form No. 7.....  | 20.00   | miner's inches |
| Under contract form No. 8.....  | 2.250   | miner's inches |
| Under contract form No. 9.....  | .160    | miner's inches |
| To El Capitan Indians.....  | 40.00   | miner's inches |
| To the urban tracts of Normal Heights, Bonnie Brae,<br>Teralta Heights and Kensington Park an indefinite<br>amount, but originally..... | 5.00    | miner's inches |
| Total.....  | 473.09  | miner's inches |

Of this amount 49.385 inches are being delivered to urban users primarily for domestic consumption, while these consumers do in some cases use a part of their water for irrigation. The remainder of 423.715 inches is being delivered to consumers for irrigation purposes solely except as to their incidental domestic use, and all of this domestic service except the 20 inches for La Mesa is made from what is known as the pipe line system of this company below the La Mesa reservoir. Under the facts herein stated it is asserted by Messrs. Haines & Haines in their brief that this Commission has no jurisdiction over the delivery of 44.385 inches, 20 inches of which is for the use of the La Mesa Mutual Water Company and by them delivered in the town of La Mesa, and the remainder delivered to suburban territory of San Diego which has, since the hearing, been incorporated into the town of East San Diego. I will discuss this suggestion when I am dealing with the law of the case. If, however, the contention of these protestants is correct, the control of this Commission over this water company is not very substantial, for under the protestants' theory of the case all of the remainder of the water except the five inches delivered to Normal Heights, Bonnie Brae, Teralta Heights, and Kensington Park, is removed from our control by reason of contracts.

I will eliminate from consideration the authorities presented by the riparian owners who are not parties to this case, but will endeavor to recommend such a disposition of the matters herein involved as will properly dispose of the case but will be least likely to produce riparian complications. We are asked by the applicants to fix rates, and we are asked by the protestants to enforce better service. However, before taking up and disposing of these matters it will be well to consider just what our authority is under the state of facts disclosed by the record hereinbefore discussed, and thereafter if we are of the opinion that we have authority it will be necessary to discuss the evidence relating to valuation and condition of the system.

The effect of a contract by a public utility with its consumers touch-

ing the service which it renders as a public utility has been often before the courts. Particularly is this true of a public utility water company. The parties herein have presented for our consideration a long list of authorities, and I have deemed it best not only to consider the authorities herein presented, but to discuss all of the important litigated cases on the power of a water company to contract decided by our own Supreme Court and the leading cases decided by the Supreme Courts of the arid states, together with the Federal cases touching upon this question, so as to set at rest as far as we are concerned for all time this question, unless the matter is presented to the Supreme Court and it shall decide that our conclusions are incorrect. In other words, I think it is desirable to determine what we consider as the correct rule for our own guidance which will insure its being complied with or else squarely presented to the Supreme Court of the State, in which event we may look for a final settlement of this question.

Article 14 of the constitution of this State, so far as is pertinent to the questions before us, reads as follows:

Section 1. "The use of all the water now appropriated, or that may hereafter be appropriated for sale, rental or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner to be prescribed by law \* \* \* \*"

Sec. 2. "The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof is a franchise, and can not be exercised except by authority of and in the manner prescribed by law."

The legislature in 1885 passed an act to regulate the rental and distribution of water outside of municipalities, and the act as it then stood outlined the method of regulation which the legislature thought proper under section 2 of article 14 of the constitution. Briefly, the machinery provided was a petition to the board of supervisors of the proper county, signed by twenty-five inhabitants and taxpayers, in which event the supervisors were empowered to fix the proper rate to be charged to the consumers by any agency in control of water appropriated to the purposes of sale, rental, or distribution. In 1897, an amendment was made to this statute respecting contracts, which reads as follows:

"Nothing in this act contained shall be construed to prohibit or invalidate contracts already made or which shall hereafter be made by or with any of the persons, companies, associations or corporations described in section 2 of this act relating to the sale, rental, or distribution of water, or the sale or rental or easements or servitudes, or the right to the flow or use of water nor to prohibit or interfere with the vesting of rights under any such contract."

In 1910, sections 22 and 23 of article 12 of the constitution respecting the power of the Railroad Commission were amended so as to confer

upon the Railroad Commission of the State all of the power over public utilities theretofore exercised by boards of supervisors, and additional important powers were added respecting both the service and rates of such utilities. These amendments served to deprive the boards of supervisors of any of the powers theretofore conferred upon them by the act of 1885, heretofore referred to, and of course supersede and repeal anything inconsistent therewith in either the constitution or the acts then in force. On March 23, 1912, the Public Utilities Act went into effect. This is an enactment passed pursuant to the amendments to the constitution heretofore referred to, and which of course supersedes any previous enactment upon the same subject inconsistent therewith. In the Public Utilities Act a water corporation is defined so as to include (section 2-*x*) "every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this State," and such water corporation, as defined, is a public utility and "subject to the jurisdiction, control and regulation of the Commission and the provisions of this act." Therefore the applicants herein become subject to the jurisdiction of this Commission in so far as it is possible for the legislature to confer such authority, and as has already been said, it is admitted by all the parties to this proceeding that the applicants are a public utility and subject to the jurisdiction of this Commission, but the protestants holding contracts urge that as to them action had been taken before the amendment to the constitution and the passage of the Public Utilities Act, which prevents the legislature from exercising its admitted authority in the absence of such action. In other words, it is admitted that this Commission can exercise to the full its authority over the applicants, both as to rates and service, except as to contractual relations existing between its consumers and the applicants, but it is contended by the protestants holding these contracts that such contracts work a limitation upon the authority of this Commission.

It will be easier to understand the litigated cases in this state if we pursue such litigation historically, beginning with the cases decided in the Federal courts. The county of San Diego has furnished the major portion of litigation in the federal courts affecting this question of contract. In 1896 Judge Ross of the Circuit Court of the United States in the case of *San Diego Land and Town Company vs. National City* (74 Fed. 79), held squarely that a contract entered into either for an initial payment for a so-called "water right" or for an agreed annual rental or both, was absolutely void, and cited as authority for this position the cases of *McCreary vs. Beaudry* (67 Cal. 209), and *Price vs. Irrigating Company* (56 Cal. 431). This case was appealed to the Supreme Court of the United States and decided in 1899 (174 U. S.

739), but the Supreme Court found it unnecessary to pass upon the correctness of Judge Ross's conclusion, deciding the case on other grounds. The same question was before Judge Ross again in the case of *Laning vs. Osborne*, decided in 1896 (76 Fed. 319), in which case again Judge Ross held unequivocally that no initial charge for a water right could be made and that all private contracts for fixing rates were void. He based this decision on the previous cases of *San Diego Land and Town Company vs. National City*, *supra*, *Wheeler vs. Irrigating Company* (17 Pac. 487)—a Colorado case decided in 1888,—*Coombs vs. Agricultural Ditch Company* (28 Pac. 966),—a Colorado case decided in 1892,—and the *Price* and *Stevens* cases herein referred to. He took occasion to comment on the case of *Fresno Canal and Irrigation Company vs. Rowell* (80 Cal. 114), and *Fresno Canal and Irrigation Company vs. Dunbar* (80 Cal. 530), to the effect that the latter two cases are not authority for the legality of a water rate, Judge Ross holding that in those cases it did not appear that the Fresno Canal and Irrigation Company was dealing with appropriated water. The *Laning* case was appealed to the Supreme Court of the United States, and is reported under the title *Osborne vs. San Diego Land and Town Company*, decided in 1900 (178 U. S. 22). The syllabus in this case reads as follows:

"The appropriation and distribution of water in California is a public use, and the right to collect tolls or compensation for it is a franchise, subject to regulation and control in the manner prescribed by law, and such tolls can not be fixed by the contract of the parties."

This language in the syllabus is not supported by the text, and this fact is adverted to by the Circuit Court of Appeals in *San Diego Flume Company vs. Souther* (104 Fed. 706). In the recent publication of the Supreme Court this syllabus has been corrected. The Supreme Court in the *Laning* case again found it necessary to pass upon the contention of Judge Ross that such contracts were illegal. While not directly decided, the gist of the opinion seems to be that after rates are fixed by the proper authority contracts fail.

The matter was again before the Circuit Court in the case of *Souther vs. San Diego Flume Company*, which case was not reported, but which is authority for the same doctrine, namely, that contracts for initial water rights and annual rates are illegal. The case was appealed to the United States Circuit Court of Appeals and decided in 1898 (90 Fed. 164), in which case the Circuit Court of Appeals held that the trend of the decisions of the Supreme Court of California are that "neither the provisions of the constitution declaring that the use of water of the State appropriated for irrigation purposes is a public use, nor the statutes of 1885 authorizing the board of county commissioners

on petition of consumers to fix the rates to be charged by a company supplying water for such purposes, affects the right of such a company to make valid contracts with its consumers for the furnishing of water where the rates have not been so established. Such irrigation companies are private corporations and in the absence of statutory prohibition or regulation have the same right to contract as individuals." The decision of the Circuit Court was reversed, and one of these contracts that is now before us was held by the Circuit Court of Appeals to be valid, at least at the time the matter was before this court. The court also refers to the fact that the use of water for irrigation in a state like California is a public use and that there is no Federal question involved in its regulation, and the Federal courts under such circumstances will take as conclusive the decisions of these questions by the higher court of the state involved, and cited *Fallbrook Irrigation District vs. Bradley* (164 U. S. 112), and other cases in support of this well established doctrine. In passing, it is well to remark that the Supreme Court of the United States in the *Fallbrook* case, herein referred to, clearly decided that the use of water for irrigation is a public use, and the fact that the use of the water is limited to a portion of a community does not make it any the less a public use. A rehearing was asked for and granted by the Circuit Court of Appeals in the *Souther* case on the ground that the same question was definitely and specifically involved in the case of *Fresno Canal and Irrigation Company vs. Park*, then pending in the Supreme Court of this State. Subsequent to the decision of the Supreme Court in the *Park* case, which we will hereafter discuss, the Circuit Court of Appeals again decided the *Souther* case (104 Fed. 706), and held that the decision of the Supreme Court of the State of California in the *Park* case had effectively set at rest the question of the validity of the contract of Souther with the San Diego Flume Company which it was sought to have set aside. In the case of *Mandel vs. San Diego Land and Town Company*, Sharp intervenor (89 Fed. 125), Judge Ross again held that the contract between the San Diego Land and Town Company and Mandel for an initial water rate charge and an annual rate was void. On appeal to the Circuit Court of Appeals this case was decided in 1899 under the title, *San Diego Land and Town Company of Maine vs. Sharp* (97 Fed. 394). The Circuit Court of Appeals sustained Judge Ross, but on other grounds than the questions involved in the contract, and does not pass upon the validity of the contracts involved. In *San Diego Land and Town Company vs. Jasper* (110 Fed. 702), decided in 1901, Judge Ross takes occasion to review the decisions up to that time, including the decision of the Circuit Court of Appeals in the 104th Federal, and the decision of the Supreme Court of California in the *Park* case, and says with reference to the latter:

"Although that case seems to be generally regarded as sustaining the validity of such exactions for the right to use water appropriated under the provisions of the constitution of the State of California of 1879 and statutes of the State passed in pursuance thereof, a reference to the case as reported fails to show that any such point was involved."

Then follows a statement of the facts involved in the *Park* case, and Judge Ross continues:

"It will readily be seen from the facts thus stated that there is nothing to show that the appropriation of water there in question was made under and by virtue of the constitution of California of 1879."

The *Jasper* case was appealed to the Supreme Court of the United States and decided in 1903 (189 U. S. 439). The question of water rights and contract for rates was not directly considered, the main question at issue being the correctness of the method of fixing rates followed by the supervisors. This case will be referred to on this point later.

The case of *Souther vs. San Diego Flume Company*, heretofore discussed, as reported in the 104th Federal, was sent back to the Circuit Court for trial on the cross-complaint. The complainants answered the cross-complaint and the case of *Souther vs. San Diego Flume Company*, decided in 1901 (112 Fed. 228), is the result, and it is only in this case that Judge Ross gives up finally and reluctantly by reason of the decision of the higher court, and "accepting as I must the validity of the contracts," he says, he holds that the *Souther* contract was valid. But in the case of *Boise City Irrigation and Land Company vs. Clark* (131 Fed. 415), decided May 31, 1904, Judge Ross, who wrote the decision, sitting as one of the judges of the Circuit Court of Appeals decided against the validity of a similar contract in Idaho, although the provisions of article 15, sections 1 and 2, of the constitution of Idaho are almost verbatim, the same as the provisions of the California constitution with reference to this matter. In this decision the Circuit Court of Appeals refers to the case of the *County of Stanislaus vs. San Joaquin and Kings River Canal and Irrigation Company*, decided in 1904 (192 U. S. 201), as giving strong support to its view on the question of the invalidity of these contracts. I shall have occasion to refer to this *Stanislaus* case in connection with another aspect of the case before us.

Because of the fact that several Arizona and Colorado cases uniformly appear in all briefs filed on water questions in California, and have not been overlooked in the exhaustive presentation of these matters indulged by counsel in this case, I think it best to review enough cases from these two states so that it may clearly appear what, if any, applicability the rules there laid down have to cases arising under our constitution.



The case of *Wheeler vs. Northern Colorado Irrigation Company* (17 Pac. 487), already referred to, was decided by the Supreme Court of Colorado in 1888. Thereunder this court holds that a water contract is contrary to the provisions of the constitution of Colorado, which reserves the title to the water, by specific declaration, in the public.

*Coombs vs. Agricultural Ditch Company* (28 Pac. 966), is another Colorado case decided by the Supreme Court of that state in 1892. In this case the court again holds that water contracts are illegal under the Colorado constitution.

*Gould vs. Maricopa Canal Company* (76 Pac. 598), decided by the Supreme Court of Arizona in 1904, holds that water diverted remains public property until actually applied to the land, after which it becomes the property of the user. The only warrant for the diversion of the water by the canal company is that it supplies appropriators. The right to the use of the water by the actual user is only lost by abandonment or adverse uses. Even signing a waiver does not divest the right. The diversion of water is only made lawful by its use and the man waiving his right, if he could do so, would render non-effective what the law has made effective. A canal company can not arbitrarily transfer its right in whole or in part. *Slosser vs. Canal Company* (65 Pac. 332), was overruled on this point. This *Slosser* case just referred to was decided by the Supreme Court of Arizona in the year 1901, and in this case in addition to the portion of the decision overruled in the *Gould* case, it is held that the canal company is a public agency, which having undertaken the diverting and carriage of water is a public agency and subject to the control of the State, and after having cited section 22 of the Bill of Rights of Arizona, the court goes on to review the history of irrigation in Arizona, and shows that the rule in Arizona grows up from the law of Sonora, Mexico, relating to the acquisition and construction of public ditches, and the appropriation of the use thereof by landowners only, which gives these landowners the right to take in succession in accordance with the respective date of beginning the use, which doctrine is not applicable nor is either of these cases pertinent to the issue here involved, not so much because of the inherent difference in the organic or constitutional provisions of these various western states, but by reason of the different interpretation placed upon such constitutional provisions by the courts of last resort in these states. It is useless by way of precedent to cite these and similar cases to the question of the validity of a water contract under the California constitution, as distinguished from any public utility contract with consumers, but they do have bearing on the general question of the power of public utilities to contract, and the effect of change of law so as to make such contracts, though lawful when made, unlawful and unenforceable after the state has exercised its power of regulation. That these

courts think this is no impairment of the obligation of contracts is undoubted.

I shall proceed from this point to a discussion of the decisions of the Supreme Court of this State and of the United States respecting the question here specifically before us, which is the effect upon the power of this Commission to fix rates of a public utility water company of contracts entered into since the adoption of the constitution of 1879, and before the amendment to the constitution of 1911 and the passage of the Public Utilities Act in 1912. Believing, as I do, that the basis for the conclusion on this important matter must be found in the decisions of the Supreme Court of this State and of the United States, I have only reviewed the Federal cases and the cases from other states in order that it might appear that we were fully apprised of both the existence of these cases and the doctrines announced therein, and that we would not decide this important question without having given due consideration to all of the important litigation bearing thereon. In addition to this I have carefully read, I believe, all of the decided cases in this state bearing at all upon this point, but I shall confine this review to the more important of them.

The first case of importance decided after the passage of the constitution of 1879 was the case of *Price vs. Riverside Land and Irrigation Company* (56 Cal. 431), decided in 1880, wherein it is held that every corporation diverting water has imposed upon it a public trust—"the duty of furnishing water, if water it has, to all those who come within the class for whose benefit the use was created." This case was decided before the adoption of the statute under which the contracts here under consideration were made, and the facts evidently arose before the adoption of the constitution of 1879.

In *McCreary vs. Beaudry* (67 Cal. 120), the court said:

"Whenever water is appropriated for distribution and sale, the public has a right to use it; that is, each member of the community by paying the rate fixed for supplying, has a right to use a reasonable quantity of it in a reasonable manner. Water appropriated for distribution and sale is *ipso facto* devoted to a public use, which is inconsistent with the right of the person so appropriating it to exercise the same control over it that he might have exercised if he never so appropriated it."

The next decisions in point of time are the cases of *Fresno Canal and Irrigation Company vs. Rowell* (80 Cal. 115) and *Fresno Canal and Irrigation Company vs. Dunbar* (80 Cal. 530), both decided in 1889. In both of these cases the validity of a contract similar to the ones here in question was assumed. Another case of the same character is *San Diego Flume Company vs. Chase* (87 Cal. 561), wherein the flume company, the predecessor of the applicants herein, brought suit for

reformation of the contract and the validity of the contract was not even called in question by the litigants. Other cases of the same kind were *Cline vs. Benicia Water Company* (100 Cal. 310), *Balfour vs. Fresno Canal and Irrigation Company* (109 Cal. 221), decided in 1895. Thereafter the line of Federal decisions heretofore referred to affecting the several San Diego companies was rendered, beginning in 1896 and covering a period to 1901, which was immediately subsequent to the decision of *Fresno Canal and Irrigation Company vs. Park* (129 Cal. 437), decided in 1900, wherein for the first time in the litigated cases outside the Federal court the question of the validity of contracts for service of water was directly considered, the other cases theretofore decided having proceeded upon the *assumption* of the validity of such contracts and not directly deciding this point. Justice McFarland, who wrote this decision, in commenting on this contention raised by the parties in the *Park* case, after reviewing the cases to which I have just referred, says:

“It is contended, however, that those cases should not be considered of any value as authorities here, because in all of the said cases the court had entirely overlooked or forgotten prominent provisions of the constitution now called to our attention, and the learned counsel of the parties opposed to the present respondent in those cases failed, through dimness of mental vision, to see and call attention to the conspicuous wall of the constitution behind which, according to appellant’s contention, they could have safely put their client. It would be remarkable indeed, if during the consideration of all these various cases, and down to 1898, the thought never suggested itself either to court or counsel that the novel and notable provisions of the constitution about water, now relied on, could be invoked as defenses to those actions; but, as such a thing is barely possible, we will give the question an independent investigation.”

Justice Temple, who wrote the concurring opinion in which Justice Harrison joined, does not take the same decided view of this matter as does Justice McFarland. After stating that he does not consider the *Rowell* and *Dunbar* cases as authorities entitled to much weight in the matter before the court in the *Park* case, he says:

“Nor do I think it a matter to excite our special wonder if, as stated in the opinion, until within the last few years no one would have thought of doubting the right to so contract that in suits brought some fourteen years ago neither counsel nor the court should have made such a point. But since in those cases the point was not raised, and was not alluded to, it could not have been passed upon. The practice of the court is not to decide points involved on appeal unless they are actually raised.”

Justice McFarland, continuing in the opinion, reviews the history of the use of water for mining and irrigation purposes in the state and he

further interprets the language of section 2, article 14, of the constitution as meaning "that if the legislature shall by statute prescribe the particular manner in which the rights shall be exercised that manner (if it be reasonable) must be followed if consumers insist on it; but in the absence of such statute then 'by authority of law' means by authority of the general substantive law of the land in which all rights to property and its use and enjoyment are founded. Our conclusion is that the contract involved in the case at bar is not made invalid by the provisions of the constitution invoked by the appellant."

The general view expressed by the majority of the court in this opinion is that while the legislature has under the constitution provided a method of fixing the maximum rate still within such maximum rate fixed as provided by the legislature, the consumers and the company may contract and before such maximum rate is fixed they have absolute power of contract respecting this subject under the provisions of the statute of 1885. Justices Van Dyke and Garoutte concurred with Justice McFarland, while, as has already been said, Justice Harrison concurred with Justice Temple, and in his concurring opinion the following language is used:

"I concur in the judgment, and generally in the opinion of Mr. Justice McFarland. But while I agree with the construction given to the act of 1885, to wit: that it only preserves the maximum rate and does not prohibit special contracts between the supplier and the consumers of water, yet in my opinion, the power to regulate conferred and enjoined upon the legislature by sections 1 and 2 of article 14 of the constitution is plenary, and the legislature may, if it sees fit, prescribe the only rates and the only terms upon which water may be sold, rented or distributed. The legislature may deem it desirable not only by its regulations to prevent extortionate charges but also to prevent favoritism or unjust discrimination. Until it does so, however, I think the parties interested are free to contract."

The *Park* case, upon which most of the succeeding cases are founded and upon which the Circuit Court of Appeals based its decision reversing Judge Ross, merely holds that the legislature under the provisions of the constitution had provided a method in the statutes of 1885 for fixing the maximum rates by the boards of supervisors, and that within these maximum rates the parties might contract, and further that until the supervisors had fixed such maximum rates the parties might freely contract, and in the concurring opinion the doctrine is laid down that the power of the legislature is plenary and that it can provide for the fixing of actual rates and prevent discrimination; and the main opinion contains no language which can be held to be in conflict with this language in the concurring opinion of Justice Temple. It likewise appears from this case, as pointed out by Judge Ross in the case of *San*

*Diego Land and Town Company vs. Jasper, supra*, that there is nothing to show that the appropriation of the water which was the subject of this suit was made under and by virtue of the provisions of the constitution of California of 1879. On the contrary the implication is strong from the fact that the Fresno Canal and Irrigation Company was organized in February, 1871, that the appropriation was made long prior to the adoption of the constitution of California of 1879.

The next case directly concerned with a contract between a water company and a patron, is the case of *Stanislaus County vs. Bachman* (152 Cal. 716), decided in 1908. In that case the court said:

"The constitutional provision was not intended to prevent a land owner from acquiring and attaching to his land a right to the permanent use of water for its irrigation. If the right to the use of water for that purpose can not be made permanent, but is subject to change or termination at the hands of the public authorities, under the guise of regulation and control, then such use would be of little value. Water for irrigation is not ordinarily used for annual crops, for which the place of use can be changed from year to year, but for trees, and vines, and alfalfa. Permanent rights to the use of water for irrigation may still be obtained by contract, notwithstanding the provisions of the constitution, subject only to the condition that the state may, if it choose to do so, regulate and control the use. This was fully decided in *Fresno Canal and Irrigation Company vs. Park* (129 Cal. 443). How far the State can go in the regulation and control of the use when thus secured by private contract, it is not necessary here to decide. The legislature has delegated the power of control and regulation of waters outside of the cities to the board of supervisors of the respective counties. It does not appear that there had been any attempt to regulate or control the use of water in Stanislaus County, and, consequently, the terms of contracts remain in full force and constitute the measure of the rights of the parties, and under the present statute, the contract rights prevail in all cases and the board of supervisors being powerless to effect or interfere with them (Statute of 1887, page 49)."

Here the court was referring to the amendment to the statute of 1885 made in 1897, to which a reference has already been given, providing that the statute should not be construed as invalidating contracts already made. As to the effect of this provision I shall have more to say later.

I have also carefully considered several other cases which are usually cited, more or less directly bearing on this subject, but find that they do not change the rule which I conclude is the result of the *Park* case, namely, that under article 14 of the constitution and the statutes of 1885 passed pursuant thereto and the amendments to this statute, the boards of supervisors were empowered only to fix maximum rates, and that until they had fixed such maximum rates the parties are free to con-

tract, and that after such maximum rates have been fixed the parties are free to contract within such maximum rates, but what effect the change in the statute would have upon such contract made either before or after the board of supervisors had exercised this authority has not been decided nor touched upon by the Supreme Court of this State except in the concurring opinion of Justice Temple in the *Park* case, wherein the intimation is strongly thrown out that the power of the legislature to legislate upon this subject is plenary, and that it could prevent discrimination between patrons of a water company organized to distribute water for profit under the provisions of the constitution of 1879, and hence interfere with contract resulting in such discrimination.

It is interesting to note, however, that in no California case where the validity of a contract for water either for annual rates or for an initial charge is under consideration had the board of supervisors of the county having jurisdiction fixed the rates, so far as the record shows. That such rate had not been fixed in both the *Park* and *Bachman* cases is specifically referred to in the decision. In the case of *Osborne vs. San Diego Land and Town Company, supra*, and *San Diego Land and Town Company vs. Jasper, supra*, the Supreme Court of the United States considered this matter but did not reach any conclusion counter to the one I have here stated. In the *Osborne* case (178 U. S. 22), the board of supervisors of San Diego County had not fixed the rates but the contracts of the San Diego Land and Town Company with its consumers provided that the annual rates shall "be fixed by the party of the first part (the water company) as allowed by law." Commenting upon this situation and the effect of the statute of 1885 with reference thereto, before the board of supervisors of San Diego County had acted pursuant to its authority thereunder, the Supreme Court says:

"Its purpose (the act) is regulation deliberate, a judicial and periodical regulation by a selected tribunal, and we cannot believe that the legislature intends by an absolute and peremptory provision to fix rates upon the water companies unalterable by them, no matter what change in condition might supervene. Against rates which may become unreasonably high the statutes give relief to consumers through petition to the boards of supervisors. Rates which may become unreasonably low, it surely does not intend to impose on the company forever, except as relief may come from the voluntary justice of its customers or by a violation of the statute and appeal to the courts. There is nothing in the act to indicate such purpose, nor does it need to have such purpose. Its dominant idea is regulation of rates by law, not commanded to be exercised by the governing bodies as a voluntary duty as establishing rates in cities and towns, but exercised when invoked by petition. Until the necessity of that, what more natural and just than to leave the right with the water companies and recognize it as legal. This is

the meaning, we think, of the provisions of articles 5 and 8 *supra*. To so interpret them makes the scheme of regulation complete—adequate, without being meddlesome or oppressive. The power of regulation is asserted and provided for, and read to be exercised to correct abuse, and who doubts but that its exercise would be invoked.”

In the *Jasper* case (189 U. S. 439), the board of supervisors of San Diego County had fixed the rates and the point was raised that such a fixing of rates interfered with the contract rights of the consumers. With reference to this the court said:

“It is contended that the owners of water rights described in *Osborne vs. San Diego Land and Town Company* (178 U. S. 22), which it is said now have been decided to be valid (*Fresno Canal and Irrigation Company vs. Park*, 129 Cal. 437; *San Diego Flume Company vs. Souther*, 90 Fed. 164, 104 Fed. 706), are entitled to water upon merely paying their share of the expenses, and that all the water takers have water rights. We shall say nothing on these points.

The Supreme Court upheld the decision of the Circuit Court (110 Fed. 702), which had refused to declare invalid an ordinance of the board of supervisors of San Diego County fixing the rates to be charged by the San Diego Land and Town Company. If it were not for the fact that in the contracts involved in this case just considered, the language to which we have already referred in our review of the *Osborne* case is used, which provides that the rates shall be fixed by the water company as allowed by law, slightly distinguishes the contracts of the San Diego Land and Town Company from the contracts of the San Diego Flume Company, we would here have a direct affirmance by the Supreme Court of the United States of the validity of the ordinance of the board of supervisors of San Diego County fixing rates when the parties had attempted to fix the same by contract. It does not seem to me that the distinction is very important, however, in that under the San Diego Land and Town Company system the right of the water company to fix the rates was reserved and not made definite, while in most of the San Diego Flume contracts a specific rate is set out. It is hard for me to distinguish between the reservation of a power to fix rates as desired and the actual fixing of the rate by contract. Bearing on this subject but not changing this rule are *Fresno Canal and Irrigation Company vs. Hart* (152 Cal. 450); *Fresno Canal and Irrigation Company vs. Ede* (152 Cal. 453); *Graham vs. Pasadena Land and Water Company* (153 Cal. 596); *Churchill vs. Russell* (148 Cal. 1); *Hubbs and Miners' Ditch Company vs. Pioneer Water Company* (148 Cal. 407); also *Tule River Ditch Company vs. Angiola Water Company* (149 Cal. 496); *Hunt vs. Jones et al.* (149 Cal. 297); *Calkins vs. Sorosis Fruit Company* (150 Cal. 426); *Fellows vs. City of Los Angeles* (151 Cal. 52);

*Lowe vs. Yolo County Water Company* (8 Cal. App. 167); *Bashore vs. Mooney* (4 Cal. App. 276); *De Wolfskill vs. Smith et al.* (5 App. 175); *Cozzens vs. Norfolk Ditch Company* (2 Cal. App. 404). A perusal of the above cases, however, will show that in most cases anything bearing upon the question of contracts with a public service water company is dictum because of the fact that private appropriations in most of these cases were being discussed and not water secured from a public service water company.

I will now consider certain other cases which have been decided from time to time between the decisions in the *Park* case and the decision in the *Leavitt* case, to which reference will hereafter be made, which while not directly deciding the question of contract have a very strong bearing upon the issue of law here involved. The *Park* case was decided in 1900. Later in the same year the case of *Crow vs. San Joaquin and Kings River Canal and Irrigation Company* was decided (130 Cal. 309). This was a case wherein the complainant, Crow, had been furnished previously with water by the defendant company under an agreement that if he did not pay for the same he could not require it to be furnished again. The court holds that under these circumstances it is the duty of the company to continue to furnish water to the complainant under the facts stated, and in support of this conclusion says:

"The use of water, in this state, appropriated 'for sale, rental or distribution,' is a public use (Constitution, article 14, section 1), and by the act of March 12, 1885, enacted to carry out this provision of the constitution, it is made the duty of the company administering such use, 'upon demand therefor and tender in money of the established water rates to sell, rent or distribute such water' to the inhabitants of the county 'at the established rates regulated and fixed therefor, as in this act provided, whether so fixed by the board of supervisors or otherwise,' etc. And it is further provided in said act that for failure to do so action may be maintained for 'damages to the extent of the actual injury sustained.' By section 552 of the Civil Code the same duties are also imposed upon such corporations in favor of those to whom water had been previously sold by such company. (*Price vs. Riverside Land Company*, 56 Cal. 431; *McCrary vs. Beaudry*, 67 Cal. 120; *Merrill vs. East Side Irrigation Company*, 112 Cal. 435.) It was therefore the duty of the defendant, under the law as established in this State, to furnish the plaintiff water upon the tender of the established rates; and this rule precludes the idea that any other duties can be prescribed or imposed, except the tender of the rate, as a condition for supplying water, as required by law."

It is interesting to note that Justice McFarland, who wrote the main opinion in the *Park* case, and Chief Justice Beatty, dissent from this conclusion of a majority of the court on the ground that having made the



contract Crow could not avail himself of the benefit of the statutory provision. Another case of similar import is that of *Hildreth vs. Montecito Creek Company* (139 Cal. 22), which was decided on a question of pleading, but in which certain observations were made which have bearing upon the legal status of a public service water company, but inasmuch as any such statement was in the nature of dictum a mere reference to this case is sufficient.

One other case already cited must be placed in the same category with the *Crow* and *Montecito* cases. This is the case of *Fellows vs. City of Los Angeles* (151 Cal. 52), decided in 1907, wherein Justice Shaw speaks for the court and says:

“Under sections 8 and 10 of the act (Statutes of 1885) corporations or persons engaged in furnishing water to the inhabitants of any county, which have appropriated water to that use, are required to distribute such water at the rates fixed by the board of supervisors of the county, or as fixed by the corporation or person, and upon tender of such rates and demand therefor by any inhabitant who is entitled to water from such system, such person or corporation is under an obligation and duty to supply such inhabitant with water to the extent of his reasonable share of the available supply belonging to the system.”

In this review of the cases down to this point I have failed to refer to a number of cases cited by the parties because I consider them absolutely inapplicable as I do numerous other cases decided by the Supreme Court which on a superficial examination might be considered to have bearing. I have now brought the review of all of the cases which I consider to have any bearing on the question before us down to the case of *Leavitt vs. Lassen Irrigation Company* (157 Cal. 82), written by Justice Henshaw and concurred in by all the other justices, except the Chief Justice, who took no part in the decision. Because of the strong bearing of this case upon the matter we are considering I think it proper to state the facts that were before the court. I quote from the opinion:

“Plaintiff’s asserted right to the free use of water for his Buggytown ranch rests upon the following facts: In 1889 and the years following plaintiff constructed the Susan River Irrigation system, by which he appropriated, for the purposes of sale, rental, and distribution the surplus waters of the Susan River, in Lassen County. Plaintiff testified that he appropriated these waters for the purposes of sale, rental, and distributions, and also for private use upon his Buggytown ranch. The court finds that immediately after the construction of the system plaintiff appropriated and used from the waters of the system a sufficient quantity to irrigate this ranch. Subsequently plaintiff sold his water system, but, in selling, reserved to himself ‘the prior and preferred right to take from said system a sufficient quantity of water to properly irrigate during the irrigating season of each and every year all of the lands comprising

said Leavitt's Buggytown ranch.' \* \* \* For respondent, the most favorable view which can be taken of the evidence is that he made an appropriation of waters for the public use of sale, rental, and distribution under the constitution of 1879; that by means of the same canal and ditches he made a private appropriation of water for use upon his individual land and that when he came to sell his irrigating system he withheld from the sale the waters so privately appropriated. It can not be said that there was anything illegal in these acts, but when the rights of plaintiff come to be measured by the trial court, it is noticeable that he is given far more than the facts and law warrant. Treating Leavitt's appropriation as being wholly and entirely for public use, he, the owner of the system, was but an instrumentality for the distribution of the waters which he gathered to such members of the public as might apply for them and pay to him the legal charge for the service that he rendered. If he could reserve a part, he could reserve all, and thus, by *ipse dixit*, convert a public use into private ownership, or, if he could reserve a part for himself, he could, with equal authority give away parts to others and by this method destroy what the constitution itself has declared shall forever remain a public use. Therefore, the only tenable ground upon which respondent can stand is that, with his appropriation for public use, he became a private appropriator of water for use upon his Buggytown ranch. \* \* \* This discussion has been upon the assumption that Leavitt did in fact make a private appropriation for water upon his Buggytown ranch in connection with his appropriation of the waters of Susan River for public use. If, however, the facts should be that he did not make such private appropriation, his attempted reservation of a private right out of a public trust, as above stated, would be futile and void.

"Respondent's second cause of action is based upon a breach of contract. One Purser came into the ownership of Leavitt's irrigation system. As Purser became the owner subject to whatever force and effect attached to Leavitt's reservation of water for his Buggytown ranch, it is to be remembered that all other waters were appropriated for the public use of sale, rental, and distribution, and that Purser stood simply as the agent of the public in the execution of this use. Purser, while so the owner, made a contract with Grace Elledge, a daughter of plaintiff, who was at that time in possession of 160 acres of land. By this contract Purser agreed to supply Grace Elledge with sufficient water from the Susan River irrigation system for the annual irrigation of this land. Grace Elledge agreed to pay the sum of one dollar per acre annually 'for each and every acre of land which may have been previously cleared of brush or cultivated.' It was further agreed that the water should be delivered by Purser at seasonable times and should be taken and used by Grace Elledge in conformity to the lawful rules and regulations which Purser might make. It was understood that Grace

Elledge should have a priority right to the use of water over and above all other consumers saving those who held contracts like her own. \* \* \* This contract between Purser and Grace Elledge was acknowledged upon February 15, 1896, and upon the same day there was endorsed thereon, but not acknowledged the following: 'For a valuable consideration I hereby assign the within agreement and all my rights thereunder to B. H. Leavitt (signed) Edward T. Purser, Grace E. Elledge.' Subsequently Grace Elledge made a deed of the 160 acres of land to her father, Leavitt, granting therewith 'all ditches, water and water rights used thereunto or appurtenant thereto.' "

After discussing certain minor objections, the court goes on to say:

"Waiving all minor objections, had Purser the power so to burden his public trust with this perpetual private right? Purser, it is to be remembered, held all of these waters as an appropriator for sale, rental, and distribution under the constitution of 1879. He was but the purveyor of this public use, the agent in the execution of this public trust. If, by any method however devious, there can be carved out of this public trust such a private right, it must obviously result in the destruction of the public use itself. Nakedly stated, it amounts to this, that a corporation which has appropriated water which the constitution has declared shall forever be devoted to a public use, may contract with A, B and C to supply them in perpetuity with a given quantity of this water, and then, by assigning in turn to A, B and C, its rights under these contracts, confer upon A, B and C a private right superior to and destructive of the public use. If this can be done with one it may be done with many, and water which has thus been appropriated for public rental, distribution, and sale may, by this legerdemain of the law, be transferred into private ownership and use. This may not be done.

"The fundamental and all important proposition then is this, that a public service water company which is appropriating water under the constitution of 1879, for purposes of rental, distribution, and sale, can not confer upon a consumer any preferential right to the use of any of its water."

The court then goes on to state that even before the adoption of the constitution of 1879, this could not be done, and reviews various cases touching on the question of the status of a public service water company, citing cases affecting other classes of utilities, as well as water companies, showing that in the minds of the court, a public service water company was affected by the same rules of the law as are other public utilities. The court thereupon, continuing in this very able decision, so clearly outlines its views as to the effect of the decision of the Supreme Court of this State theretofore rendered, that I desire to set out these views more at length.

"It does not follow," says the court, "that a water company may not make specific contracts with individual consumers which are

within the purview of the constitution and within valid legislative enactments regulating the public use. This is precisely as decided by *Fresno Canal Company vs. Park*, 129 Cal. 437. But, as decided in *Crow vs. San Joaquin Irrigation Company*, 130 Cal. 309, immediately following the *Park* case, such a contract, even if violated by the consumer, could not operate to deprive him of his constitutional right to the water furnished by the public service corporation upon tender to it of the legal rate. For the breach of the consumer's contract, the company must seek other redress than that of depriving the consumer of his share of the supply. The language of this court in *Stanislaus Water Company vs. Bachman*, 152 Cal. 716, must be construed in the light of the facts there presented. The court was there considering the claim of a water company to the right to collect rates in excess of those fixed by a contract made with its predecessor, its claim being in part founded on the theory that by a foreclosure sale it had acquired the water and distributing system free from that contract. The opinion, in the main, goes upon the theory that the water in control of the company was not subject to a public use, and upon that theory it was held that the contract to furnish water to Bachman's land attached the water right to it as an appurtenance, with the right to receive water from the previous owner of the system and its successors at the contract rates. The company made the additional argument that the water was in fact devoted to public use, that if it could be thus attached to land as an appurtenance, the property dedicated to public use would be converted into private property, and that, as this could not be permitted, the contract was against public policy and void, so far as it attempted to create the appurtenance or fix rates. This argument is not fully stated in the opinion. In answer to the argument the court cited the case of *Fresno Canal Company vs. Park*, 129 Cal. 437, and declared that the constitutional provision regarding water devoted to public use did not prevent a water company from making a contract giving to a particular tract of land the right to receive water for permanent and continuous use for irrigation, subject to the condition that the public authorities could regulate and control the use. Such a contract disposing of water devoted to public use, of course, would not technically attach it to the land as an appurtenance. It would do nothing more than bring the land within the territory to which the public use extended, and establish its status as land permanently entitled to share in the public use. It did not appear in that case that any public regulation had been made and the contract controlled the rights of the parties. It was therefore immaterial, so far as the right to collect the rates in controversy in that case was concerned, whether the water right was appurtenant to the land as private property, or whether the land was entitled to a part of the water as a share in the public use, where public rates had not been fixed and private contracts controlled. \* \* \*

"It is, of course, a truism of the law that an act of the legislature conflicting with constitutional provision must fall. All of the acts of the legislature regulating or attempting to regulate the public use of water so appropriated are subordinate to the provisions of the constitution and to be valid, must be in harmony therewith. We have said, and undertaken to show, that a water company organized under the constitution of 1879, which has appropriated waters of the State for public rental, distribution and sale, can not give a preferential right to one consumer over another. \* \* \*

"In *Fresno Canal Company vs. Park*, 129 Cal. 437, it was held that, in the absence of a rate fixed by the supervisors, a rate agreed upon between the parties could be enforced. In *Crow vs. San Joaquin Irrigation Company*, 130 Cal. 309, it was held that a consumer did not deprive himself of the right to take water under the rate established by law by reason of his refusal to pay under and in accordance with the terms of his contract."

On the same day the court decided the case of *Lassen Irrigation Company vs. Long*, wherein it reiterated the conclusion which it had reached in the *Leavitt* case. And recently in the case of *Imperial Water Company No. 5 vs. Holabird* (197 Fed. 4), the Circuit Court of Appeals of the United States has occasion again to consider water contracts, and regardless of the fact that the same Circuit Court of Appeals had, as heretofore pointed out, on the authority of the *Park* case, held such contracts binding, this court goes back to the position of Judge Ross in the early San Diego cases and the *Boise City Irrigation* case and reaffirms its former position that such contracts are invalid under the constitution of the State of California and cites as authority for this doctrine the *Leavitt* case which we have discussed. So that without going further into the general rule applying to contracts of public utilities respecting their public utility functions, I feel that we are justified in concluding that even as to a public utility water corporation, concerning which the decisions have been much more confusing than concerning any other kind of a utility, the right to fix a rate by contract is subject to the power of the State to substitute a rate fixed by the properly constituted authorities for the rate agreed upon by contract, and the sole function of contracts between a water company and its consumers, is to fix the relationship of the parties before the public authorities shall have acted, and in addition thereto probably would have the effect as to the land involved to "establish its status as land permanently entitled to share in the public use."

It appears sufficiently from what has been stated herein and from the cases herein reviewed, that it is not violative of the provision of the constitution of the United States which denies to the states the power to impair the obligation of contracts, for a state to fix a rate

which shall apply to a public utility such as a water company which conflicts with the rate agreed upon by such utility and its consumers in a contract valid when made and if this rule can be invoked in reference to a water company it, of course, can be equally well invoked in the case of any other utility. But this matter has been pressed upon the attention of the Commission with such force in both this and other cases, involving water contracts as well as contracts with other public utilities, that I deem it advisable that we here consider the decisions on this question of law, rendered by the Supreme Court of the United States. Article I, section 10 of the constitution of the United States provides that no state shall pass any law "impairing the obligations of contracts." The same provision respecting the power of the legislature of this State is contained in section 16 of article I of the constitution of this State, but, of course, does not add to the effect of the Federal provision. The power to fix rates of a public utility is in the nature of the police power, at least it is the power of government to control property devoted to the public use. Ever since the decision of the case of *Munn vs. Illinois*, 94 U. S. 113, this has been recognized. In that case, after reciting the fact that under the common law certain classes of business were regulated and that the rates for certain character of service were fixed by public authority, the court says:

"This brings us to inquire as to the principle upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to the common law, from whence came the right which the constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only.' \* \* \* When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use but, so long as he maintains the use he must submit to the control."

In *Fallbrook Irrigation District vs. Bradley*, 164 U. S. 112, the Supreme Court held that the use of water for irrigation in the State of California was a public use even though under the facts of the case therein discussed, only a portion of the public was served, and in *San Diego Land and Town Company vs. National City*, 174 U. S. 739, the court again discusses the public nature of the use of water for irrigation in this State, and applies the same rules with reference thereto as theretofore have been applied by the same court to railroads in the case of *Smyth vs. Ames*, 164 U. S. 466. As has already been stated, article XIV of the constitution of this State provides that the use of water is a public use and the decisions on this point to the same effect are so numerous and unanimous, both of the Supreme Court of this State

and the Supreme Court of the United States, that it is unnecessary to discuss this further, and we proceed upon the theory that the public use discussed in the *Munn* case and the doctrine announced there, to which that court has consistently adhered up to the present time is applicable to a water corporation such as the applicants herein, having appropriated water for sale, rental and distribution, and that the same principle which we shall find applicable to the regulation of other utilities applies with equal force to the regulation of the applicants.

In the case of *Stanislaus vs. San Joaquin and Kings River Canal Company*, 192 U. S. 202, the Supreme Court discusses generally the subject we have here before us. In this case the effect of the change from the law of 1862 of this State, respecting the rates of water companies, to the statutes of 1885 is considered. In commenting upon the fact that the law of 1862 under which this company was organized allows one and one half per cent per month upon the capital actually invested, the court says:

"It seems to us that language of this nature can not properly be construed as a promise or pledge that the limitation as to rates may not be altered at any time when in the judgment of the legislature, it may be proper so to do. Water rates which might have been perfectly reasonable at the time of the passage of the act of 1862, although amounting to one and one half per cent per month upon the capital actually invested, might, in the course of years, become exceedingly burdensome to those who use the water, and amount to a very unreasonable compensation to the company for the water it sold. \* \* \* The authority given by the act of 1862 enabled the board of supervisors to conditionally regulate the rates. There is no promise made in the act that the legislature would not itself subsequently alter that authority. The State simply authorized its agents, the boards of supervisors, to regulate rates, but not to reduce them below a certain point. We do not think that from this language a contract can or ought to be implied—that the State might not thereafter authorize the boards to reduce them, or that it might not itself do so directly. Even as between individuals, such an implication would not be a reasonable one from the language used, and as the contract, if it existed, would take away from the legislature its otherwise undoubted right of regulation upon a subject of great public importance, there is still less reason for implying a contract which would prevent the State from using its power to that end for the future. The language of this portion of the act applies to the boards and limits their right to reduction, leaving unhampered the right of the State to interfere directly or by authorizing the boards to reduce the rates below the point stated in the act. In order to make such a contract the language must be plain, and susceptible of no other reasonable construction."

Continuing, the court reviews the *Munn* case, and other cases wherein the effect of statutes exempting property from taxation is discussed, and the well known rule that such statutes are merely a license and do not prevent the State thereafter to change them and tax the property of corporations formed thereunder, is referred to, and a comparison between the effect of such statutes and those empowering the legislature to regulate the charges for water is adverted to in the following language:

“To regulate or establish rates for which water will be supplied is in its nature the execution of one of the powers of the State, and the right of the State so to do should not be regarded as parted with any sooner than the right of taxation should be so regarded, and the language of the alleged contract should in both cases be equally plain.”

In the case of the *Home Telephone and Telegraph Company vs. Los Angeles*, 211 U. S. 265, the court again announces the same rule and discusses in detail the conditions under which the State will have been considered to have waived, or authorized a municipality to waive, the power to regulate public utilities. The court there says:

“The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legislature has the authority to make such surrender, unless the authority is clearly delegated to it by the supreme legislature.”

As early as 1871, and hence long before any of the facts upon which this controversy is based arose, the Supreme Court of the United States in the *Legal Tender* cases, so-called, 12 Wall. 550, said:

“As in a state of civil society, property of citizen or subject is ownership subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government and no obligation of a contract can extend to the defeat of legitimate governmental authority.”

This doctrine has been adhered to by the Supreme Court of the United States through a long line of cases, the last to which I have a reference being the case of *Louisville and Nashville Railroad Company vs. Mottley*, 219 U. S. 467, and the rule is well established that contracts are always made subject and subordinate to the powers of government, and such contracts are entered into subject to the full legal effect of this rule and it is no impairment thereof for the State in the proper exercise of its authority to disregard them. To be sure, the *Mottley* case discussed the effect of the amendment of the Inter-



state Commerce Act, requiring transportation to be paid for in cash, upon a contract, made prior to such amendment, for a pass, admittedly lawful when made, but contrary to the provisions of the amendment, and it is sometimes attempted to distinguish the principle announced therein from the one applying to the effect of a statute of a State passed after the entering into of contracts lawful when made, but which would be unlawful if entered into subsequent to the passage of said state statute. This distinction is sought to be made, because of the fact that the constitution of the United States, while inhibiting the states from passing any law impairing the obligations of contracts, does not place any such restriction upon Congress, and that while Congress can pass an act which would render invalid a contract theretofore valid if made concerning the regulation of commerce or other power of the Federal government, it is urged that the State can not exercise a similar power, by reason of the provision of the Federal constitution. That this distinction is not justified is readily seen from a consideration of the authorities. The *Stanislaus County* and the *Home Telephone* cases, which dealt solely with state power, clearly lay down the rule that a State can not be construed as having surrendered its authority to regulate utilities, unless it is made plainly to appear affirmatively that either the State has done this or has empowered a legal subdivision so to do and such legal subdivision has acted. Therefore, it is only necessary to bring the case we are now considering under the rule of the *Legal Tender* and *Mottley* cases to show that the State had not contracted with the agency we are here considering, the applicants herein, or their predecessor, either specifically or by a general law which could be construed as a contract, permitting them to make rates by contract, thereby divesting the State of the sovereign power of fixing these rates, or that it had conferred upon the board of supervisors, or any other agency having jurisdiction in the matter, the power so to contract, which power had been exercised by the subordinate authority in favor of these applicants.

The result of the theory that a public utility, on the silence of the State as to its desire to exercise an admitted governmental power, may contract and thereby prevent the State from exerting such authority is plainly stated in the *Mottley* case. There the court, citing Judge Cooley with approval, says: "Contracts are always more or less affected by general laws even when in no way referred to \* \* \*. But this incidental effect of the general law is not understood to make it a law impairing the obligation of contracts. It is the necessary effect of any considerable change in the public laws. If the legislature had no power to alter its police laws (and here rates were involved) when contracts would be affected, then the most important and valuable reforms might be precluded by the simple device of entering into contracts for the purpose. No doctrine to that effect would be even

plausible much less tenable." In other words, it being well established that the State has the power under the State and Federal constitutions to fix, either directly or by subordinate authority, the rates of the applicants, the sole question left is, did the State, by contract with the applicants, waive such right and affirmatively allow these applicants to assume this sovereign power, or did it by statute empower the board of supervisors so to contract and having empowered the board of supervisors to contract did the board of supervisors act upon such authority? I think the cases already reviewed, particularly the *Stanislaus* case from the Supreme Court of the United States and the *Crow* and *Leavitt* cases from our own Supreme Court, conclusively show that this has not been done.

Again, referring to the *Leavitt* case, we find the court saying that in the *Crow* case "immediately following the *Park* case, such a contract even if violated by a consumer, could not operate to deprive him of his constitutional right to the water furnished by the public service corporation upon tender to it of the legal rate"; and further, "we have stated, and undertaken to show, that a water company organized under the constitution of 1879 which has appropriated waters of the State for public rental, distribution and sale, can not give a preferential right to one consumer over another."

In this language the court plainly shows itself to be of the opinion in line with a decision of the Supreme Court of the United States in the *Stanislaus* case, that the statutes passed pursuant to article XIV of the constitution up to the time of this decision in 1909, could not be construed to amount to a contract on the part of the State to waive its admitted right to regulate these agencies, and the inference is also very strong that the legislature does not have the power to contract away this authority, because the authority is anchored in the constitution, but it is not necessary to a decision of this case that such be true. The only language which could possibly be construed to have any bearing upon this subject is that in the amendment to the act of 1885, passed in 1897 (Statutes of 1897, page 49) which reads as follows:

"Nothing in this act contained shall be construed to prohibit or invalidate any contract already made, or which shall hereafter be made, by or with any of the persons, companies, associations or corporations described in section 2 of this act, relating to the sale, rental or distribution of water, or the sale or rental or easements and servitudes of the right to the flow and use of water; nor to prohibit or interfere with the vesting of rights under any such contract."

Independent of the suggestion of the Supreme Court in the *Leavitt* case, that this language is unconstitutional, and giving it all of the effect, which, as a valid statute, it could have, it goes no further than to

say that the act of 1885 does not prohibit or invalidate contracts, but does not by implication or otherwise, carry with it the inference that that act does validate or sanction contracts. If it has any effect at all it merely subtracts whatever effectiveness the statutes of 1885 had against these contracts, and leaves the subject in the same condition with reference to the validity or invalidity of such contracts as though no statute had been passed at all, and we must rely, as the Supreme Court of this State does, in the *Leavitt* case, upon article XIV of the constitution. Granting that the legislature had the power under the constitution to contract away the right of the State to regulate a water company having appropriated water for sale, rental or distribution, under the decisions heretofore referred to, such contract must be explicit and unambiguous and a direct and affirmative grant and this language in the amendment of 1897 certainly could not be tortured into meaning any such thing.

Contracts such as these are entered into by the parties in full legal contemplation of the power of the State to exercise its authority and although the State has not exercised its authority, such power to exercise such authority is in effect a condition subsequent as much a part of the contract as though written therein by the parties and hence, of course, on the happening of the condition subsequent the effect of the contract as against the power of the State to regulate becomes nil. It may be asked what relief a party entering into a continuing contract for a full consideration has when the State acts and deprives it of the benefit for which it has paid. This same question was raised in the *Mottley* case and there discussed by the Supreme Court of the United States wherein the court said:

“Whether without enforcing the contract in suit the defendants in error may by some form of procedure against the railroad company recover or restore the rights they had when the railroad collision occurred is a question not before us and we express no opinion upon it.”

In the *Leavitt* case, the Supreme Court of this State in commenting upon contracts between a water company and its consumers which can not be enforced by reason of the power of the State to control such agencies says:

“For the breach of the consumer’s contract, the water company must seek other redress than that of depriving the consumer of his share of the supply.”

By reason of the fact, as pointed out earlier in this decision, that the powers of the boards of supervisors that have been the subject of the discussion in the various cases referred to, have been conferred upon this Commission and enlarged by the provisions of the constitution and the Public Utilities Act so as to go beyond the power possessed

by the boards of supervisors under the provisions of the act of 1885, and that this Commission is now empowered not to fix merely the maximum rate, but the exact rate which shall be charged by every public utility, including a water company, and is empowered to prevent deviations from such rates and as stated by Mr. Justice Temple in his decision in the *Park* case, the legislature in its exercise of its plenary power conferred upon it by sections 1 and 2 of article XIV of the constitution, has deemed it desirable in order "to prevent favoritism or unjust discrimination" to confer upon this Commission the power to fix the actual rates, it can no longer be questioned that this Commission has the right to fix the rates which may be charged by the applicant and prevent deviations from such rates, contracts to the contrary notwithstanding, and by reason of the fact that this same question is continually coming up with reference to utilities, other than water companies, I deem it proper at this time that we announce a similar conclusion with reference to all utilities. It is my opinion that no contract affecting the relationship which exists between a public utility and its patrons or in any other way affecting the public is of any effect in the face of this Commission's authority, except this Commission shall approve the same as a rate which it has a right to do under the Public Utilities Act, providing such action will not bring about discrimination.

Most that has been said heretofore refers to contracts made prior to the amendment of the constitution in 1911 and the passage of the Public Utilities Act in 1912. Contracts entered into between a public utility and its consumers subsequent thereto, do not even for the time being establish the relationship of the parties with the condition subsequent that on the action by the State with reference to the subject matter thereof such relationship can not longer continue and such contracts now require, as a condition precedent to their having any effect whatsoever, the approval of this Commission, and when they have the effect of fixing a rate, such approval merely amounts to an establishment of the rate therein agreed upon and does not prevent the Commission as it may with any other rate, from thereafter changing said rate as provided by law.

Before leaving this subject, however, I think it well to say that contracts entered into in good faith between public utilities and their patrons that are not forced or compelled in any way, and are based upon an adequate consideration should be adopted so far as is consistent with adequate regulation as the basis for the rates for the service performed by a public utility for its patrons. But at any time when changing conditions bring about the necessity of a change in rate, the Commission should exercise its undoubted authority to depart from

the conditions of any such contract, however proper such contract might have been in its inception.

The utilities of the State, however, must not take this announcement as authorizing them to repudiate contracts which they now have. Contracts made prior to the recent amendments of the constitution and the passage of the Public Utilities Act probably fixed the status of the parties as regards their mutual relationship until the public authorities act, and at any event the matter should be presented to this Commission before either party attempts to change such relationship. As to contracts made since the amendment of the constitution in 1911, such contracts unless they have had the approval of this Commission by being filed and adopted as a rate are void from the beginning. We make this statement because we do not desire to have this decision used as a means or urged as an excuse for avoiding contracts which the parties do not desire to carry out, for the necessary result of this would be that the parties would avoid the contracts they did not like and seek to have enforced the ones that pleased them. We specifically announce that we expect the status to be maintained until one or the other of the parties to a contract has appealed to this Commission or the Commission has, on its own initiative, taken up and decided the matter.

I do not believe there is any force in the contention of the protestants that the incorporation of East San Diego since March 23, 1912, has served in any way to impair the jurisdiction of this Commission to fix the rates within the confines of this municipality. It is our view that under section 23, article XII, of the constitution and section 82 of the Public Utilities Act, the cities are limited to the power which they possessed on the 23d day of March, 1912, and that no extension of this power may be had. The city of East San Diego not being in existence on this date is incorporated as a city of the sixth class at a time when such cities are limited to the powers over utilities which they had vested in them on the 23d day of March, 1912, which, of course, as to this city was nil.

Neither do I believe that the contract with the La Mesa Mutual Water Company at so much per thousand gallons made by the predecessors of the applicants is beyond the control of this Commission. The applicants herein as the successors to the San Diego Flume Company are a public utility, and under the provisions of the Public Utilities Act, all rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules and regulations are subject to the approval of this Commission and to change by the order of this Commission, and this Commission has ample authority to fix any charge which any public utility shall make for its commodity and there cannot be found any authority in the constitution or the statutes of this State for exempt-

ing a wholesale rate of a public utility from the jurisdiction of this Commission. Therefore, while admittedly the Commission under the authority of *McFadden vs. Los Angeles* (74 Cal. 571), has no authority to fix the rate which the La Mesa Mutual Water Company shall charge to its stockholders if it is in fact a mutual company, yet this does not at all affect the power of the Commission to regulate the relationship which exists between this corporation as a consumer of water and the public utility which furnishes the same. Therefore, I reach the conclusion that all of the rates and all of the conditions of service of the applicants are properly subject to the jurisdiction of this Commission.

Such being the case it will be necessary to review the facts brought out in the testimony upon which a decision fixing rates and regulating service must be based.

Considering the question of rates and service it would be well to consider just briefly the decisions applicable to the fixing of rates of a public utility. Such decisions, however, are so familiar and the general principles so well established that it will only be necessary to call them briefly to mind. In the case of the *City of Palo Alto vs. Palo Alto Gas Company*, decided by this Commission on the 12th day of March, 1913, the principles which guide this Commission in the fixing of rates are set out. These principles are the result of the decisions beginning with the case of *Smyth vs. Ames*, 169 U. S. 466, and the following cases decided subsequently thereto, some of which deal with water companies and others do not, but inasmuch as we have already seen that the Supreme Court of the United States in the case of *San Diego Land and Town Company vs. National City*, 174 U. S. 739, has held that the principles laid down in the *Ames* case as applicable to the rates of a common carrier are likewise applicable to a water company such as the one before us, we may consider all of the cases which I shall cite as proper to be considered in this proceeding. These cases are:

*Lerington Turnpike vs. Sanford*, 164 U. S. 578;

*Osborne vs. San Diego Land and Town Company*, 178 U. S. 962;

*San Diego Land and Town Company vs. Jasper*, 189 U. S. 439;

*Stanislaus vs. San Joaquin and Kings River Canal and Irrigation Company*, 192 U. S. 202;

*Knoxville Water Company*, 212 U. S. 1;

*Wilcox vs. Consolidated Gas Company*, 212 U. S. 19.

The doctrine which results from these cases is that the present fair value of the property being used by a public utility for the convenience of the public is the basis upon which rates are to be fixed and in the *Ames* case it is held that original cost of construction, the amount expended in permanent improvements, the amount and market value of stocks and bonds, the present as compared with the original cost

of construction, the probable earning capacity of the property under particular rates and the sum required to meet operating expenses, are all matters for consideration "and are to be given such weight as may be just and right in each case." The *Jasper* case also in addition to this, holds that the price at which a plant has been bought at a foreclosure sale is evidence to be considered in a rate fixing inquiry. This case also announces some important principles with reference to the effect upon a right to earn rates of the construction of a property in extent beyond the needs of its consumers, and to this I shall refer again shortly. The *Knoxville* case deals primarily with the effect of depreciation upon value.

Evidence was taken upon all of these matters to which the courts have said consideration should be given and this decision is based thereon. It is stated in the evidence that the approximate original cost of this property was \$1,250,000, although this is based entirely upon recollection, and has no foundation from accounts submitted in evidence. The San Diego Flume Company, predecessor to the applicants, issued \$600,000 of bonds, but it is not in evidence how much money was actually realized from the sale thereof. The amount of capital stock was \$1,000,000. Neither these bonds nor the capital stock now have any market value, however, and the evidence shows that the bonds were burned after the acquirement of the system by the applicants and the original San Diego Flume Company as a corporation has gone out of existence.

The applicants, as has already been pointed out, consists of two individuals owning the system in common and therefore at the present time there is no outstanding stock nor bond issues of the present owners. But we have considered this matter in connection with the predecessor in interest of the present owners. We have also referred to the fact that the present owners purchased this system in 1910 for \$150,000 and the Supreme Court of the United States in the *Jasper* case, in referring to the price secured under foreclosure proceedings said:

"But at all events it is decided that the price is often we might say more important evidence than the original cost: *Dowe vs. Beidelmunn*, 125 U. S. 680."

The evidence shows that since purchasing this property the applicants have expended in permanent improvements, additions and betterments to the system, approximately \$52,000.

In order to have a basis for considering the other very important elements which the Supreme Court has held shall be considered in arriving at a value upon which rates are to be fixed, as well as to determine the character of the service, it is well to have before us a more detailed description of this system than we have heretofore given.

The evidence shows that the system consists of the Cuyamaca reser-

voir located at the head of Boulder Creek at an elevation of about 4,600 feet. The drainage area tributary to the reservoir is about twelve square miles, and it has a storage capacity of about 11,400 acre feet. Water stored in this reservoir is released into the natural channel of Boulder Creek down which it flows to what is called the diverting dam, which is located about  $12\frac{1}{2}$  miles below the Cuyamaca reservoir on the San Diego River. At this point it is picked up, together with the natural flow of the stream, and carried through a flume to the lands of the consumers. This flume is about 33 miles long, of which .8 of a mile is tunnel, .76 of a mile is steel syphon, and 31.4 miles wooden flume. This flume is a rectangular structure open at the top running at a uniform grade of 4.75 per mile throughout its entire length and is constructed to carry in the neighborhood of 5,000 miner's inches of water. Near the end of the flume are three storage reservoirs known as Murray Hill, with a capacity of 134 acre feet, La Mesa, with a capacity of 1,460 acre feet and Eucalyptus with a capacity of 26-acre feet. Eucalyptus and Murray Hill reservoirs are at the end of the flume at an elevation of approximately 625 feet. The La Mesa reservoir is connected with the end of the flume by an open ditch following the contour of the hills and is about two miles directly west of Eucalyptus and Murray Hill reservoirs. Its elevation is about 485 feet. Service from the system is first rendered in the vicinity of Lakeside and from thence westerly through El Cajon Valley to La Mesa directly from the flume itself. From La Mesa westerly the service is divided into two classes known as high service and low service covered by pipe systems, the former being served by Murray Hill and Eucalyptus and the latter by La Mesa reservoir.

The district covered by this pipe service includes La Mesa and Lemon Grove and that section westerly to the city limits of San Diego. The nucleus of the system consisting of the Cuyamaca reservoir, the diverting dam, flume and Eucalyptus reservoir was constructed in 1888-89. La Mesa reservoir was added in 1895 and Murray Hill reservoir in 1910 and 1911. The pipe distribution system extending from Murray Hill and Eucalyptus reservoirs westerly has been gradually installed since 1888 as demand required and is of various ages.

The dams forming Cuyamaca, La Mesa, Murray Hill, and Eucalyptus reservoirs are of earth. The diverting dam is of masonry. These structures are permanent in character and are in good condition. The flume is a timber structure and as previously indicated has been in use since 1888. It is in very poor condition. The evidence shows that in the twenty-four years past its useful life has practically ended through the operation of depreciation and decay. Its condition is such that at the present time repairs in most cases are impossible due to the inability of the timbers to withstand new work. It is admitted by all of



the engineers who testified in this case that it should be replaced immediately, not only because of its physical condition and the necessity for large maintenance charges, but also because of the large saving of losses in the water transmission. I find as a fact that adequate service for the consumers requires the immediate replacement of this flume.

The pipe distributing system, as has already been said, is of varying ages from 1888 to the present time, and much of it is in immediate need of replacement. While I do not find that the same losses as are incident to the condition of the flume are brought about by the condition of these pipe systems, yet I do find as a fact from the evidence that 45 per cent of the pipe distribution system has outlived its useful life, and that adequate service to the consumers requires the immediate replacement of at least 45 per cent of the pipe distribution system.

Because of its great importance the question of the water supply, the safe yield of this system has been carefully considered. Mr. Charles H. Lee, Hydraulic Engineer, made an investigation on behalf of the company, and Mr. Philip E. Harroun, Hydraulic Engineer for the Commission, made a similar investigation on behalf of the Commission. These two engineers' conclusions check within 4 per cent, and because of this substantial agreement I am spared the difficulty of determining to which one greater weight should be given. The evidence shows that large losses occur throughout the system. It is found that, of the total storage in Cuyamaca reservoir, 56 per cent is lost in seepage, evaporation and transpiration, leaving but 44 per cent of the annual catchment available at the reservoir for transmission. As previously stated, this stored water is passed down the open channel of Boulder Creek about 12½ miles to the diverting dam. In passing down this channel the transmission loss was found to range from 15 per cent to 84 per cent, the average being about 30 per cent, leaving available at the diverting dam an average of a little less than 31 per cent of the water stored in the Cuyamaca reservoir. The losses in transmission in the flume and those in the distribution systems from the flume to the consumers are not capable of subdivision, and as in the case of transmission from Cuyamaca reservoir through Boulder Creek to the diverting dam, will vary with the supply turned into the flume. It is agreed by Mr. Lee, testifying for the company, that this loss will amount to at least 25 per cent, while Mr. Harroun suggests a slightly higher figure. I will, however, for this purpose accept the transmission loss of 25 per cent. The amount of water which the present consumers require for adequate service has been determined from the actual measurements of the amounts delivered at the meters during the years 1909 and 1910 when a normal supply was available. It is pointed out that during these years all consumers were allowed to take all of the water they wanted up to the limitation of amounts set out in their

contracts, and it is urged that the amounts taken in these years will cover the requirements of the consumers, and I believe such is the case. In 1909 there were delivered to the meters of the consumers of this system 247 miner's inches, and in 1910, 265 miner's inches. The evidence shows that aside from domestic consumers no consumers were added to this system between 1909 and 1910, and the 18 miner's inches by which the 1910 supply exceeded the 1909 supply being considerably greater than could be accounted for by the domestic consumers added to the system. I am inclined to think that 265 miner's inches more nearly approximates the needs of the consumers than the smaller figure. Assuming the needs to be the average between these two amounts, and, as I have said, I think this will be somewhat low, we would have 256 miner's inches as the amount of water which the requirements of the consumers demand be available at their meters. Remembering that there is a 25 per cent loss between the diverting dam and the consumers' meters, it will appear that 256 miner's inches is only 75 per cent of the amount which should be available at the head of the flume, which would then be 340 miner's inches.

The record of the water supplied, kept by the flume company, was admitted in evidence from the year 1899 to and including 1911. This record covered a period of dry years from 1899 to 1904 inclusive, two of which the evidence shows were the driest on record in southern California, and it also contains a record of a period of normal and above normal years from 1905 to 1911, and it is the opinion of the engineers that this probably gives a full range of conditions which may be met in this watershed.

In determining the safe net yield of a system for irrigation it is testified that much more difficulty is encountered than to obtain the same fact with reference to a domestic supply. In the case of water supplied for domestic purposes the system must be capable of supplying at all times sufficient water for its consumers, and the safe net yield must be based upon the minimum possibility of this supply because the demand is continuing and any substantial diminution works great hardship upon the consumers. This, however, is not the case with an irrigation system. In periods of shortage it is possible for crops to get along with a supply below that which they normally require. The determination of this minimum amount for crop requirements which may be used as a basis for determining the safe net yield must be a combination of measurement and judgment. This problem is the result of the following considerations. If in California, where the rainfall varies greatly from year to year, each irrigation system be limited in its operation to supplying that number of consumers only whose reasonable requirements would be met in the driest year, the result would be that most all of the water companies in this State would in by far

the majority of the years be allowing a great portion of the water supply to waste which would serve to restrict the area which might be irrigated, and also by reason of this fact raise the cost for each unit of water used. While on the other hand if the water company be permitted to take on consumers up to the limit of its ability to serve in the year of maximum supply—and this has been too often the case in California—we would have a condition wherein in almost every year the consumers' crops would suffer for water. Good judgment will dictate a medium *aurum* which, while not perhaps actually the average, will insure in the driest year which the history of the region in question for a sufficient number of years shows is likely to occur, a sufficient amount of water to carry crops through the year without serious or permanent injury, if as in this case the crops are trees and vines. A somewhat different rule perhaps might be followed with crops of different character. Therefore, while in the case of *Palmer vs. Southern California Mountain Water Company* we were inclined to take as the basis for the safe yield the maximum requirements of the consumers and the minimum precipitation and run-off, which is necessary when considering domestic service, yet I believe for the reasons I have already pointed out, such a rule here where irrigation is being considered, would not be to the advantage either of the company or the irrigators, and would be contrary to public policy if applied to a company whose consumers, as here, are largely irrigators.

Mr. Lee and Mr. Harroun are in accord with their conclusion that the year 1902 may be safely taken as a proper average year to determine the safe net yield of the system. On the basis of this year's supply it is found that the flow of the San Diego River, together with the storage available in the Cuyamaca reservoir and regulated by the storage in La Mesa, Eucalyptus and Murray Hill reservoirs, will produce as at the diverting dam 256 miner's inches, and this may be taken as the safe net yield of the system available as at the diverting dam. Deducting the loss of 25 per cent assumed for transmission we have 192 miner's inches at the consumers' meters. As we have previously seen, the requirements at the present consumers' meters are 256 miner's inches. Therefore, we see that in a year like 1902, which was a year of ordinary and not excessive drought, the accepted average year, the consumers on this system would have to get along with three fourths supply and the engineers agree that to make the consumers safe there should be 100 per cent of the requirements available in the system in such a year. This whole matter is so difficult to determine and of such tremendous importance to the State that I have outlined briefly what the evidence on this point shows in this case, and have made such observations as I think the evidence warrants, but taking conditions as they actually exist in this system, both Mr. Lee and Mr. Harroun are of the

opinion that the adequacy of the system to supply its consumers is not more than 75 per cent, which means that an arrangement for conserving the supply so as to produce  $33\frac{1}{3}$  per cent more water must be brought about in order to do justice to the present consumers under this system. It is my opinion that the adequacy of this system as here understood can be brought up to 100 per cent without serious difficulty, so that even in such dry years as 1899, 1900 and 1904, the supply could be kept up beyond the minimum which results in substantial and permanent damage to the crops of these consumers. And as to other years than those of excessive drought the adequacy of the system can be brought up to 100 per cent without any difficulty whatsoever by merely making the needed repairs to the system. Plenty of water is now in control of the applicants not only to serve their present consumers but to extend their supply to others, but having admitted by these contracts these irrigation consumers to the status of users from the system, and having performed acts which bring the land of these contract holders "within the territory to which the public use extends" and having established the status of such lands "as land permanently entitled to share in the public use" (*Leavitt vs. Lassen, supra*), it is the duty of the applicants to furnish an adequate supply to these present consumers, either domestic or irrigation. It is my belief that after having furnished water to the consumers by contract or otherwise, that a public water company, while it does not "technically attach it (the water) to the land as an appurtenance," assumes an obligation which it cannot get rid of except by abandoning the water which is the subject of the public use (*Leavitt vs. Lassen*), and it should be prevented from loading its system with any consumers in addition to those with whom it has assumed obligations until it shall have increased the safe yield of the system beyond the needs of its present consumers. This was our position in the case of *Palmer vs. Southern California Mountain Water Company*, heretofore referred to, decided on January 21, 1913.

I, therefore, find as a fact that the applicants have a supply of water in their control devoted to public use adequate to furnish all of the necessary demands of those for whose benefit such public use was created, but that by reason of inadequate facilities such applicants are wasting said water and are not properly or adequately supplying the demands of their said consumers; and I further find as a fact that the facilities for furnishing a supply of water to such consumers and the supply of water available under the present condition of this system for the service of such consumers are, and each of them is, inadequate, insufficient, unjust and unreasonable; and I further find as a fact that the increase of the net safe yield of this system, at least  $33\frac{1}{3}$  per cent over its present safe supply, is necessary to render its facilities and service adequate, sufficient, just and reasonable.

The consumers did not insist upon the applicants introducing in evidence their plans for the improvement of their service and the increase of their supply by additional storage or otherwise by reason of the fact that if such plans were made public it might embarrass the applicants in carrying them out and might add to the cost which would ultimately be reflected in the rate to the consumers. Yet these plans have been submitted to the Commission, and its engineers, and it is my opinion and the opinion of our engineering department that if carried out they will serve not only to increase the supply sufficiently for the needs of the present consumers, but will greatly increase such supply, and I therefore do not make a finding nor suggest an order as to the specific character of the improvements, except as relates to the flume, to be made by these applicants, to take care of the inadequacy which I have found as a fact exists. Yet if the applicants do not immediately proceed to carry out such or similar plans, in addition to what is ordered herein, I will recommend that an order be entered requiring specific action on the part of this utility designed to cure its inadequacy, and I recommend that this be held in abeyance for a reasonable time and that no decision or order be rendered upon the specific improvements to be made in addition to those herein ordered, looking to an increased supply, but that if such improvements are not actually undertaken within a reasonable time that the Commission render a decision based upon evidence which will hereafter in such event be required to be formally submitted in this case, requiring proper action to be taken.

In order for rates of a public utility to be just to such utility they should be sufficient after caring for cost of operation, maintenance and depreciation to yield a reasonable return upon the present fair value of the property devoted to the public use. While the courts have well established this rule and have indicated from time to time the elements to which I have already referred, which should be considered by a rate fixing body, yet they have never defined the word "value," a term concerning the meaning of which there is of course much dispute. In fact, its meaning is the bone of contention between the two great schools of economic thought. That as applied to a public utility, however, it can not have the significance which the man on the street attaches to it, namely, what the property considered will sell for, it seems to me, is so plain that I become impatient with the superficial thinking which attributes such meaning to it. And were it not for the fact that even such an eminent authority as the Supreme Court of the United States rejects the view that what a utility property as a whole will sell for determines its value, mainly on the ground that because of the nature and magnitude of such properties they do not change hands often enough to use this method as a guide, I should think the mere statement of this theory would carry with it its refutation. Of course

in a rate fixing inquiry what a property as a public utility will sell for has no place as a factor, except as such amount is affected or determined by the cost to produce such property and not by its earning capacity. When one would sell a farm or a store the buyer desires to know what such farm or store will earn, and if he finds the property will earn, say ten per cent net on ten thousand dollars, he will be willing, if there is a reasonable likelihood of such a condition remaining permanent, to give ten thousand dollars for it. But certainly the ten per cent net earning on a certain value is determined by the price for which he sells the commodity the property produces for sale. And so in the case of a public utility the value determined from the earning power depends upon the rates and the rates are what is to be determined, and we find ourselves in a circle. To illustrate again concretely: Suppose we have a gas plant which at certain rates is earning \$8,000 net per annum after paying maintenance and operation charges and providing for depreciation. This amount is 8 per cent on \$100,000, and if this method is correct the property is worth \$100,000. But if the rates be reduced so but \$4,000 net per annum is earned then the property is worth but \$50,000, and by the same token if the rates are increased so that an earning capacity of \$16,000 net per annum results the value of the property is \$200,000. In short to adopt such a view means we cannot regulate the rates of public utilities because every time we do so we change value and if we reduce such value we will be depriving the utility of a part of its property without compensation, which we may not do under the constitution of the United States, and if we raise rates we present value to the utility which thereafter we can not take away for a like reason. But the courts are thoroughly committed to the view that we can regulate the rates of public utilities, ergo this method of arriving at value must be discarded.

It is fortunate, therefore, that the Supreme Court of the United States has failed to define "value" and has contented itself with pointing out certain elements that should be considered, leaving the determination of the composite fact "value" to the discretion of the tribunal empowered to act. My own view is that the nearest and fairest approximation which may be made to a correct "value" upon which a public utility shall be allowed to earn is the amount of the investment wisely made and this view is not at all in conflict with the position of the courts in this regard. The elements which we have been directed to consider may all well be secondary evidence of this ultimate fact. However this may be, this Commission in every rate fixing inquiry should give careful consideration, as we have done here, to each of the elements prescribed and should give that weight to each in each case to which we conscientiously think in that case it is entitled, with the hope that thereby we may arrive at such fair value of the property

devoted to the public use as is just and fair to the utility and at the same time not oppressive to the consumer.

I have already considered the evidence on original cost, stocks and bonds and cost to the present owners and will now consider the cost of reproducing the property in its present physical condition. The appraisal of the property on behalf of the applicants was prepared in detail by Mr. Fulton Lane and concurred in generally but not as to details by Messrs. J. B. Lippincott and W. S. Post. It is presented in detail in Applicant's Exhibits Nos. 2, 3, 4, 5 and 6. The appraisal for the Commission was prepared by Mr. P. E. Harroun, hydraulic engineer for the Commission.

The words "present value" here used should not be misunderstood. It is a term used by engineers to represent a result which is obtained by taking the cost to reproduce a property, under consideration, new and then deducting from that cost the amount which in the engineer's opinion the structure has depreciated. To this result they apply the term "present value" and when such term appears in this opinion it should be so understood and as not having any other significance than the one here suggested.

I submit here two tables comparing the results obtained by Mr. Lane and Mr. Harroun in parallel columns, first, as to their general appraisals, and, second, as to their land values, and shall discuss these tables somewhat in detail.

TABLE 1.—Showing Comparative Valuations of System of Applicants: Cuyamaca Water Company.

| Items.                                      | Reproduction cost (with overhead). |   | Annual depreciation (with overhead). |   | Present value (with overhead). |   |
|---|------------------------------------|---|--------------------------------------|---|--------------------------------|---|
|   | For the company:<br>Lane.          | For Railroad<br>Commission:<br>Harroun. | For the company:<br>Lane.            | For Railroad<br>Commission:<br>Harroun. | For the company:<br>Lane.      | For Railroad<br>Commission:<br>Harroun. |
| <i>Collective System—</i>                   |                                    |   |                                      |   |                                |   |
| 1. Lands and rights of way.....             | \$239,701 00                       | \$116,000 00                            | -----                                | -----                                   | \$239,701 00                   | \$116,000 00                            |
| 2. Buildings and improvements on lands..... | 15,858 00                          | 13,320 00                               | \$877 00                             | \$466 00                                | 8,948 00                       | 5,540 00                                |
| 3. Cuyamaca dam.....                        | 43,311 00                          | 37,950 00                               | 360 00                               | 370 00                                  | 34,850 00                      | 28,450 00                               |
| 4. Diverting dam.....                       | 38,167 00                          | 34,370 00                               | 378 00                               | 343 00                                  | 35,916 00                      | 25,764 00                               |
| 5. Flume system.....                        | 717,837 00                         | 585,000 00                              | 22,567 00                            | 18,900 00                               | 235,583 00                     | 145,000 00                              |
| 6. Eucalyptus dam.....                      | 11,992 00                          | 10,910 00                               | 127 00                               | 110 00                                  | 9,588 00                       | 8,720 00                                |
| 7. La Mesa dam.....                         | 24,294 00                          | 16,200 00                               | 359 00                               | 163 00                                  | 20,023 00                      | 13,440 00                               |
| 8. La Mesa ditch.....                       | 6,550 00                           | 7,080 00                                | 156 00                               | 186 00                                  | 3,729 00                       | 3,720 00                                |
| 9. Murray Hill reservoir and pipe line..... | 48,707 00                          | 49,540 00                               | 488 00                               | 495 00                                  | 48,219 00                      | 49,005 00                               |
| <i>Distribution System—</i>                 |                                    |   |                                      |   |                                |   |
| 1. Pipe lines.....                          | 92,928 00                          | 87,730 00                               | 6,012 00                             | 5,310 00                                | 28,237 00                      | 29,030 00                               |
| 2. Meters.....                              | 684 00                             | 684 00                                  | 14 00                                | 14 00                                   | 384 00                         | 384 00                                  |
| <i>Miscellaneous—</i>                       |                                    |   |                                      |   |                                |   |
| 1. Material on hand.....                    | 3,481 00                           | 3,481 00                                | 92 00                                | -----                                   | 3,389 00                       | 3,389 00                                |
| 2. Tools, equipment, etc.....               | 3,985 00                           | 3,985 00                                | 331 00                               | -----                                   | 3,322 00                       | 3,322 00                                |
| 3. Telephones.....                          | 2,633 00                           | 2,340 00                                | 75 00                                | 69 00                                   | 456 00                         | 1,170 00                                |
| Totals.....                                 | \$1,250,128 00                     | \$968,550 00                            | \$31,636 00                          | \$26,426 00                             | \$672,345 00                   | \$452,934 00                            |



TABLE 2.—*Showing Detail Valuation Comparison Sheet of Lands of Applicants' System.*

| Item, right of way,<br>and lands.       | For Railroad Commission: Harroun. |       |               |                | For company: Lane. |       |               |                |
|---|-----------------------------------|-------|---------------|----------------|--------------------|-------|---------------|----------------|
|   | Quantity.                         | Unit. | Unit<br>cost. | Total<br>cost. | Quantity.          | Unit. | Unit<br>cost. | Total<br>cost. |
| Indian reservation.....                 |                                   |       |               |                | 60                 | Acre  | \$400         | \$24,000       |
| Indian line to Los<br>Coches .....      |                                   |       |               |                | 58                 | Acre  | 10            | 580            |
| Los Cochcs to Sec-<br>tion 5 house..... | 233                               | Acre  | \$28          | \$6,510        | 60                 | Acre  | 75            | 4,500          |
| Section 5 to end of<br>flume .....      |                                   |       |               |                | 30                 | Acre  | 150           | 4,500          |
| Flume to La Mesa<br>reservoir .....     |                                   |       |               |                | 25                 | Acre  | 150           | 3,750          |
| Cuyamaca lands .....                    | 1,675                             | Acre  | 56            | 93,800         | 1,675              | Acre  | 100           | 167,500        |
| La Mesa reservoir<br>site .....         | 96.7                              | Acre  | 112           | 10,810         | 96.7               | Acre  | 250           | 24,175         |
| Eucalyptus reser-<br>voir site .....    | 4.36                              | Acre  | 112           | 480            | 4.36               | Acre  | 350           | 1,526          |
| Murray Hill reser-<br>voir site .....   | 26.2                              | Acre  | 168           | 4,400          | 26.2               | Acre  | 350           | 9,170          |
| Totals.....                             | 2,035.26                          |       |               | \$116,000      | 2,035.26           |       |               | \$239,701      |

Examination of the first table shows that the cost of reproducing the property, as based upon the prices of labor and materials as of August, 1912, as estimated by the company, is \$1,250,128. Mr. Harroun estimated its reproduction cost as \$968,550. On the same basis the present value of the property was found by the engineers for the company to be \$672,345, as against \$432,934 by Mr. Harroun. To the present value of the physical items entering into the property, as determined by Mr. Lane for the company to be \$672,345, there is added by him the sum of \$159,480 as intangible values, making a total value of the property as appraised by the engineers for the company of \$831,825. The item of \$159,480 of intangible value is arrived at by taking the cost of maintenance and operation, depreciation and interest on the value of the property for the two years during which it has been in the possession of its present owners, and from this sum deducting the gross earnings during that time. It is in the nature of a "going business" value. I do not believe any such intangible items should in this case be considered. It is the same as saying the more you lose the richer you become and the more valuable the agency which brings about such loss. The testimony shows that the property was bought by its present owners for \$150,000. If the accumulated deficiencies, as arrived at by Mr. Lane, had amounted to a sum such that if added to the actual cost to the owners—that is, \$150,000 plus this accumulated deficiency—had reached a sum in excess of the present value of \$432,934, I would consider perhaps some equity in the applicants' demand. For these reasons I do not consider that this item should be included.

It is apparent from the second comparative table above presented that a large discrepancy exists between the values placed upon the

lands and right of way by Mr. Lane and Mr. Harroun. Mr. Lane finds this item to have a value of \$239,701 as against the value arrived at by Mr. Harroun of \$116,000, a difference of \$123,701 in favor of the company.

The details of Mr. Lane's valuation of the lands are given on Sheet No. 1, of Applicants' Exhibit No. 2. In examining the details it is found that under the head of right of way 60 acres of the total of 233 acres are within the Indian Reservation. Mr. Lane places the value of this right of way at \$24,000. He states that he bases this upon the value of the right which the Indians have, which is to use water from the flume free of charge, but does not give the details of its determination. In other words, because the United States exacts a free use of 40 inches of water for its wards and Mr. Lane believes this water is worth a certain amount he assumes that the land thus purchased for a right of way is worth the amount paid for it. This of course is not the proper rule. (*San Diego Land and Town Co. vs. Jasper*, 189 U. S. 439; *Boise Irrigation Co. vs. Clark*, 131 Fed. 415.) If it were, a public utility might contract away a part of its service for an inadequate consideration and thereby burden its other consumers by reason of its fraud or generosity. It certainly is a novel theory that servitudes on a property which cause it to perform a service for nothing increase its value. But if the applicants urge here that the price which the government has exacted is the proper measure of the value of this portion of the property, and is alone to be considered, then we can very readily simplify this whole matter by accepting the sum of \$150,000, which the applicants paid for this property as the correct measure of its value. The right of way through this reservation contains 60 acres. It consequently follows that its value on Mr. Lane's theory is \$400 per acre.

The right of way lying between the Indian reservation and Los Cochos trestle, and containing 58 acres, he values at \$10 per acre. The right of way within the Indian reservation is less valuable, if any, than that from the reservation to Los Cochos, and if it were not for this capitalized water right value, would certainly not have a value of over \$10 per acre. If, however, it be taken at the same rate as that immediately adjacent it would make the value of the right of way \$23,400 less than he estimated. On this basis his average acre price for right of way would be \$59.79, ranging from \$10 to \$150. In Mr. Harroun's estimate of the cost, he has used a uniform rate for the right of way of the flume of \$25 per acre, the land being uncultivated and barren, and I believe from all of the testimony this is ample.

With reference to the Cuyamaca lands, comprising 1,675 acres, to which Mr. Harroun has given a value of \$56 per acre with overhead, and Mr. Lane \$100 per acre without overhead, I have carefully consid-

ered all of the testimony in addition to that produced by the engineers. Fours witnesses, Messrs. W. L. Detrick, Frank T. Hill, I. B. Williams and George W. McCain, testified with reference to the value of this land, but any fair estimate of their entire testimony will not justify a figure of \$100 per acre for all of this 1,675 acres of land. They testified that some of it is worth \$100 per acre, and Mr. McCain testified that some of it is worth \$150 per acre, but it is in evidence that no land in the vicinity in tracts as large as this is being sold, and that one large tract of 20,000 acres is being offered in the whole for \$200,000. No one of these gentlemen testified that the entire 1,675 acres is worth \$100 per acre, and they specifically stated that some of it is not. This land is many miles from the railroad in the mountains, and I do not believe from the testimony that it is worth anywhere near \$100 per acre when taken in its entirety, but in order to be sure that no injustice is done to the applicants and in view of the fact that the engineers did not carefully inspect this land nor did other real estate experts do so, I am willing to allow a total valuation of \$144,000 for the Cuyamaca land and find that this value is at least ample and if anything in excess of the real value of this land.

In the constructural items of the system considerable discrepancies are found among the various items as presented by Mr. Lane and Mr. Harroun. These discrepancies are traceable largely to the use of different unit costs. Mr. Lane's unit costs in most cases are much in excess of Harroun's and seem to be based to a considerable extent upon the costs of work elsewhere rather than at this particular point. Some of these costs are also found to contain local overhead charges, ranging from 10 per cent to 15 per cent, and contractor's profits from 20 per cent to 30 per cent. Harroun's unit costs do not contain such items. It may be stated that Mr. Lane used in addition to his unit costs an overhead charge of 20 per cent on all construction items, with the exception of the pipe distribution system, where he has used 15 per cent overhead. Harroun used 10 per cent for contractors' profits and 12 per cent overhead compounded or a total of 23.2 per cent all told.

The unit costs used by the engineer of the Commission in the determination of the value of this property have been from a careful personal analysis of the situation based upon twenty-five years' experience in construction of similar work which Mr. Harroun has had. I cannot help but feel that the unit costs which he has used are fully justified and liberal.

Mr. Lane's unit costs are also based in some cases upon material prices much in excess of those used by Harroun. This is particularly true in the case of the unit costs used in the reproduction of the flume. His lumber has been taken at a base price of \$33 for redwood, where Mr. Harroun uses \$27. This illustrates the conditions. The same con-

ditions are also true in regard to the prices for materials. The evidence shows that all such were from actual quotations from reputable firms who were entirely willing to enter into contracts at the prices furnished to the engineering department of this Commission, which prices Mr. Harroun uses.

Mr. Lane also includes in his value of the flume \$25,236 for what he calls reserve lumber. Since Murray & Fletcher have owned this system they have been making some repairs and replacements to the flume and trestles which support it. This reserve lumber valued by Mr. Lane at \$25,236 is refuse lumber which had been taken out of the old structure and is scrapped. The evidence shows it is located at various points along the flume, mostly in inaccessible places, is badly rotted and it has in my opinion no value other than for firewood, and on account of its inaccessibility would not pay for loading and hauling to a market for that purpose.

In arriving at the present value of the physical items entering into the property from the reproduction costs, it has been previously stated that straight-line depreciation methods were used by all engineers concerned in the valuation.

Mr. Lane and Mr. Harroun differ also in regard to the estimated life of certain of the structures. This is especially true in regard to the flume. Mr. Lane's estimate of the remaining useful life of this structure is considerably in excess of Mr. Harroun's. He considers that the timber flume has a remaining useful life of four years. Mr. Harroun testified that he had carefully examined this structure and believed that its usefulness has ended, and that it should be replaced immediately, not only because of excessive maintenance charges, but also because of the large leakage which takes place through the structure at the present time, and which is impossible to remedy without practically entire reconstruction. He consequently considers that the flume has a remaining life of but two years, or one half that of Mr. Lane's, or simply sufficient remaining life to replace this structure. A very large element of the discrepancy in value is in this consideration. The evidence shows a like discrepancy in regard to other structures, and I am convinced from the evidence that Mr. Lane has not depreciated them sufficiently.

For the reasons I have herein stated I shall accept in the main the conclusion as to the condition of the system and the cost to reproduce it and the amount it has depreciated arrived at by Mr. Harroun except as to those matters wherein I have pointed out my disagreement. In doing this I am not to be considered as reflecting upon Mr. Lane or the other engineers testifying. In fact I have found a gratifying frankness on the part of both the engineer, witnesses for the applicant and the proprietors of the system and their attorney. Every request

of the Commission for information has been fully and freely complied with and every endeavor made to present to this Commission the facts. But on these matters where expert judgment is required and where our own engineers after submitting to the fullest cross examination still maintain the correctness of their conclusions if we retain our confidence in our engineering department,—and it still has our fullest confidence, else we would change it,—we should accept, I believe, the report of our own engineers, unless on cross-examination they appear to us to have erred either in their ascertainment of facts or their expert opinion based thereon. I believe for this very reason the report of our engineers should always be submitted to the parties in the case and the engineer making the same be required to submit to the most searching cross-examination, and merely because he is the Commission's engineer he should not, and of course will not, be spared the same examination as any other witness. But after this is done and his testimony remains unchanged I believe as I have already said, it should be given great weight. For an engineer for a party be he ever so honest and capable—as I believe every engineer in this case is—has the natural tendency, where there is room for honest doubt to resolve such doubt in favor of his side. He should, and honest men do, fight against this tendency, but I believe so long as he is to any extent an advocate as a privately employed engineer always is, he inevitably will manifest this tendency, just as a lawyer who, being a sworn officer of the court, and hence, in conscience at least, no different from a sworn engineer witness, always when he has an honest doubt as to the law—and some even when they have no such doubt—urges upon the court that view of the law most favorable to his client. Here our engineers can have absolutely no reason to manifest this tendency either way and therefore I take the position I do, but in justice to the applicants and their engineers I deem it necessary to make the foregoing statement.

Mr. Harroun's cost to reproduce depreciated to its present condition as corrected for the Cuyamaca lands gives a figure of \$483,134. This, however, as has already been pointed out, is only one of the elements to be considered. Taking it together with all the other elements required to be considered, I find as a fact from the evidence that the present fair value of the property of the applicants devoted to the public use is \$352,500.50.

I find from the evidence that the annual cost of operation and maintenance of this property is \$28,600, annual depreciation \$21,150.03, and interest at 7 per cent on fair value of property of \$352,500.50, \$24,675, making a total gross earning necessary to be earned \$74,425.03, assuming that the annual operation is not excessive. I am of the opinion, however, that the annual cost of operation is too high by reason of the facts to which I have referred in the analysis of the conditions of

the system. It was said in the case of *San Diego Land and Town Company vs. Jasper* (189 U. S. 438) :

“If a plant is built as probably this was for a larger area than it finds itself able to supply, or apart from that it does not as yet have the customers contemplated neither justice nor the constitution requires that say two thirds of the contemplated number should pay a full return.”

Here the flume and the filings indicate an enterprise much in excess of the present south of this company's operations. The flume is built for approximately 5,000 inches and the company now claims between 3,500 and 4,000 inches, and it is my opinion from a careful consideration of all the evidence that it can develop without infringing the right of any one in excess of 3,000 inches, which is more than sixfold its present capacity to serve land, it being obligated to serve in the neighborhood of 4,000 acres in addition to its domestic consumers. In fact, it is set out in the application that although they now serve but 4,000 acres that by the expenditure of approximately one million dollars the system can be made capable of furnishing water to 25,000 acres that are tributary to the flume, and this is in addition to the rapidly increasing demand for which a very much higher rate is paid. Can a company reserve from use a large quantity of water, serve its consumers in a very wasteful manner and maintain facilities for such service in an inadequate and decaying condition and demand an earning in addition to charging these unnecessary operating expenses and excessive losses from the system, the water representing which losses could easily be sold to waiting patrons without increasing such operating expenses? I think not and I believe this conclusion is based on common sense and I know it is sound law.

I think there are conditions when not even operating expenses might be demanded but I do not urge any such drastic rule here particularly since the evidence shows that the present owners have shown a better disposition as regards their patrons than has heretofore prevailed and likewise because they took this system burdened with contracts like an old man of the sea about it, illustrating the foolish policy of a public utility that in return for a lump sum at the beginning enters into contracts for annual payment for a continuing service that uniformly spells disaster, as the years pass, and depreciating structures and increasing cost of maintenance make such annual payment, as here, inadequate to the needs of the system. If the consumers under this system are wise they will recognize that regardless of past abuses present necessities demand for them adequate service which will be economy for them in the end even though the annual charge will be a little higher, and the present owners of the system will likewise realize it is up to them in order to reserve control of the water in excess of

that presently used to take immediate steps without any compulsion to put his system into shape.

The condition here well illustrates the evils of the permanent contract system for selling any commodity, particularly water. Here the consumers are contesting the right of the company to avoid these contracts, while we have other cases before us where the companies are comparatively new where the consumers are contesting the right of the companies to make the contracts. In other words, the right of these companies to make such contracts is uniformly contested by the consumers in the early years of a water company and defended by the company, while in the later years after the initial consideration has been spent and, the annual rates that are often too low have shown the company the disadvantage of such contracts, we find the company desiring to be rid of them and the consumer desiring to retain them. One of the main reasons for the consumers position is that they have looked upon these contracts as conferring upon them some preferential water right, which they do not do, other than to admit the consumers to the class for which the use is created. Once having been admitted they are as firmly attached to the system and as much entitled to a permanent right to take water therefrom as it is possible for them to be under any circumstances and the contracts in this respect are no longer of value to them.

Thus there is seen to be no need for the consumers to have any alarm that this decision will have the effect of interfering in any way with the permanent rights they now have. In these they should be protected both by the conservation of the supply, and the limitation of the service to those that may be adequately served, and this we propose to do. But the only danger which confronts both the consumers and this company is the danger that by the wasteful methods here found to exist, the failure to put to a beneficial use but a very small proportion of the water in control of this system will divest the right to the water and these consumers will find themselves in a position where, as against somebody else who has put this water to a beneficial use, neither they nor the applicants will be able to prevail. This is the real danger in the situation and the one which should cause both the applicants and the consumers to be reasonable, to one reasonably willing to improve the facilities, the other willing to pay a reasonable and adequate rate for the service.

I feel under these circumstances that pending the renewal at least of the flume that the applicants can not in justice and under the law demand more than the proportion of its operating and maintenances expenses which its adequacy represents, which is approximately \$21,000, I feel that a similar reduction of the other items would be warranted, but out of desire not to hamper the present owners unduly and feeling

the consumers can readily pay a little more without hardship if their service is improved I shall recommend that the gross earning allowed be \$66,825.03.

The gross revenue from all sales of water ending June 1, 1912, was \$49,076.69. I have purposely eliminated \$120.46 not secured from water sales. This makes an annual gross return of \$24,538.35 and assuming this to be a typical gross annual revenue it appears that in order to realize the amount allowed here the rates must be raised an amount sufficient to increase the gross revenue \$42,286.68. How shall this be equitably brought about?

As much of this added burden as is possible should be placed upon the domestic consumers for two reasons. First, this class of service is more expensive both to serve originally and thereafter to maintain, and second, it will stand without hardship such increase. This second reason for a higher rate is recognized in every class of utility and its validity as regards freight classifications is so well established that it is unnecessary to cite authorities. Gold ore is no more expensive to transport than coal, yet it may be and is assessed a much higher rate proportionately than the slightly added risk at all warrants.

Of the domestic service, that to La Mesa should have a lower rate than prevails for the domestic service near San Diego, because of the greater service performed by the company in the latter case. I, therefore, find as a fact that a rate of 15 cents per thousand gallons is a just and reasonable rate to be charged by the applicant to the La Mesa Mutual Water Company, with a minimum charge of \$100 per month.

I find as a fact that a rate of 25 cents per thousand gallons, with a minimum charge of \$1.25 per month, is a just and reasonable rate to be charged to all consumers for domestic purposes other than the La Mesa Mutual Water Company. The applicants to pay for all meters and all pipes to the property line, the consumer to pay for pipes and fittings on the property and the same to remain the property of the consumer.

This fixing of domestic rates will increase the revenue of the applicants as follows: for the Columbian Realty Company covering 9.875 inches from \$60 per inch per annum to \$1,182.51 per inch per annum, which means an increase per inch of \$1,122.51, or for this contract an increase in revenue of \$11,084.80; the 14.5 inches to the El Cerrito Water Company now paid for at the rate of \$30 per inch per annum, at the rate of 25 cents per thousand gallons will yield an increase per inch of \$1,152.51, or a total increase of \$16,711.50; the five inches furnished to Teralta Heights and vicinity is sold at a rate of 5 cents per thousand gallons and the increase to 25 cents per thousand gallons would mean an increase in revenue of \$4,730; the increase in revenue from



the La Mesa Mutual Water Company is hard to determine. If the increase affected the entire 20 inches the gross revenue increase would be \$8,514.52. I believe we are safe in assuming an increased revenue here of at least \$5,000. Thus, in the aggregate, the domestic consumers at these increased rates will increase the gross annual revenue if all the water is sold by \$37,526.30. If it is not all sold it is not the concern of the other consumers for water may not be reserved for sale and the cost of its development charged to those who do use water (*San Diego Land and Town Co. vs. Jasper, supra*; *Boise Irr. Co. vs. Clark, supra*).

I shall recognize the land and the consumers thereon covered by these contracts for domestic consumption to be within the class for which the public use is created, and by so reserving the necessary supply for these lands the other consumers have a right to have the proportionate cost of delivering this water and the proportionate valuation of the system which this quantity of water represents deducted from the entire cost of delivery and the entire value of the system to determine the cost and the interest on the system which they shall be required to pay.

The total gross amount of revenue to be produced by this system being \$42,286.68 there still remains \$4,678.48 to be secured from increases in irrigation rates. Inasmuch as approximately 165 inches of water delivered from the flume itself is either delivered directly to the consumers or delivered into systems mutually owned by the consumers and by them distributed to the places of use, I am of the opinion that a somewhat lower rate should apply to this water for irrigation than to the water delivered for irrigation through pipes to the consumers who do not take from the flume, primarily because of the added cost of facilities properly attributable to the second service and the added cost of delivery. After a careful consideration of all of the evidence, I am of the opinion that a rate of \$65 per miner's inch per annum should be fixed for all water delivered for irrigation in the first class to which I have referred, taking from the flume, and that a rate of \$70 per inch per annum should apply to all other irrigation users, and I find as a fact that such rates for these respective users are just and reasonable rates. While this latter rate of \$70 per inch serves to raise the rate to the consumer in most instances from \$30 per inch to this amount, yet when we bear in mind that the rate of \$30 per miner's inch per annum, which is charged for irrigation to a great many consumers from this system is by far the lowest irrigation rate for the same class of service of which we have any information, we feel that more than doubling this rate would not impose a heavy burden upon such consumers. Other consumers from this system have,

in a few instances, paid more per inch per annum than the \$70, and a great number have been paying \$65, while these favored consumers are given a rate not half as high. This is certainly a discrimination and if for no other reason the \$30 rate should be condemned.

The effect on the revenue of this change in irrigation rates will be as follows:

The 56.51 inches which are now sold at \$65 per miner's inch and delivered mostly in the El Cajon Valley will have no increase. On all of the 253.5 inches now sold at \$60 per miner's inch per annum there will be an increase of \$5 per inch, which will equal a total increase in gross annual revenue of \$1,267.50. Deducting from the 165 inches served from the flume the 56.5 now served from the flume upon which a \$65 rate now applies, we will have a remainder of 108.50 inches on the flume included in the 253.5 which is now sold at \$60 an inch which has been raised \$5 per inch per annum, which increase is covered in the \$1,267.50 above. The remaining 145 inches of the 253.5 inches is now to be collected for at the rate of \$70 per inch per annum, which means an added \$5 per inch to what is accounted for in the \$1,267.50, which, therefore, will represent an added annual revenue of \$725. There are 67.83 inches which will be raised from \$30 to \$70 per inch, making a gain in revenue of \$40 per inch per annum which is a total gain of \$2,713.20. An increase of \$25 per inch for the 3.62 inches now sold at \$45 per inch per annum adds \$90.50 to the gross annual revenue. A loss will be occasioned in the Chase contract of approximately \$30 per annum, and the change in the price for the .16 now sold at \$72 per inch per annum will have a negligible effect upon the revenue. Therefore, we have from irrigation sources a total increase of \$4,755.20 which is slightly in excess of the \$4,678.48 which was required to be realized from increases in irrigation rates.

I, therefore, find as a fact that the rates herein set out for domestic and irrigation consumers respectively are just and reasonable rates to be charged by the applicants herein, to their consumers and all rates in conflict therewith or different therefrom are found to be unjust, unreasonable, discriminatory, or insufficient.

There is one other matter to be disposed of before entering an order herein. It is the peculiar contention of the applicants that they are only required to furnish to their consumers gravity water, and they base this contention mainly upon the contracts which they are attempting to have disposed of. I do not recognize any such contention as correct. These applicants have a certain amount of water in their control at the present time largely in excess of the amount which with reasonable losses can be devoted to beneficial use. Their only warrant to the control of this water is that they devote it to beneficial use, and

whether they deliver it to consumers as it runs down from the natural flow or withhold it in impounding reservoirs either above or below its consumers, their present warrant for its reservation is that they supply their present consumers and they certainly have no right to withhold it at this date because they expect to serve other consumers below the La Mesa reservoir, because those other consumers under the law are not yet admitted into the class for which this use is created (see *Tyndale Palmer vs. Southern California Mountain Water Company*, decided January 21, 1913, and authorities therein cited.) They not only must use every endeavor to apportion this water ratable to the consumers in times of scarcity (*Leavitt vs. Lassen, supra*), but under the present condition of the system they must not admit any more consumers to the class for which the use is created except such consumers be domestic consumers within the territory already described which we have here held as beneficiary of the public use, and in such territory they must only add domestic consumers up to the minimum safe yield represented by the number of inches of water attributable to such territory. In other words, it is my opinion that under the present condition of affairs that upon the suburban tract, for example, where these applicants have obligated themselves to deliver 5 miner's inches of water on demand, and have thereby admitted this territory to the beneficial use of the water that such water should be limited to consumers whose ordinary demands represent even less than 75 per cent of 5 miner's inches, and this Commission should take good care that until these applicants improve their system they admit no new domestic consumers except on the terms indicated and that they admit no more irrigation consumers whatsoever. This is the kind of priority which we have heretofore held, to which being a member of a class for which a public use of water is created entitles such member of such class, and he should be absolutely protected and his supply never diminished by additions to the class but merely by necessary and unavoidable failure of supply.

I submit the following form of order:

#### ORDER.

The applicants, James A. Murray and Ed Fletcher, doing business under the name of Cuyamaca Water Company, a public utility having appropriated water for sale, rental and distribution within the county of San Diego, State of California, having applied to this Commission on the 25th day of June, 1912, for an order authorizing them to increase their rates for irrigation and domestic service, and a hearing having been held beginning on the 24th day of August, 1912, at which hearing it was stipulated by the applicants that this Commission should fix just and reasonable rates for this utility, and likewise that

this Commission should consider and make an order with reference to the service of said utility, and it being fully agreed that all matters pertaining to the rates and service of this utility within the jurisdiction of the Commission are properly before it at said time, and the hearing having been concluded, and thereafter, on the application of the parties, time having been granted for filing briefs, and the case having been finally submitted on the 1st day of March, 1913, and being fully apprised in the premises, the Commission hereby finds as a fact that the facilities of the applicants are inadequate, insufficient, unjust and unreasonable to its consumers, and that large, excessive and unreasonable losses occur in the system of these applicants.

The Commission further finds as a fact that in order to furnish the reasonable demands of their present consumers, being those entitled to participate in the public use to which the water in the control of these applicants is appropriated, it will be necessary for these applicants to increase their supply so as to have an increase of  $33\frac{1}{3}$  per cent over what they are now able to supply at their consumers' meters.

The Commission further finds as a fact that the applicants have in their control an ample supply of water, if the excessive losses are prevented, to supply the reasonable demands of their consumers and to increase the supply available to them for their use by  $33\frac{1}{3}$  per cent.

The Commission further finds as a fact that the flume of this system heretofore referred to and described in the opinion, has entirely passed its useful life and that it should be at once renewed.

The Commission further finds as a fact that no new consumers may be served from the system of the applicants under the present condition of the facilities without injuriously withdrawing the supply of the present consumers to which they are entitled, except in the case of domestic consumers and to the extent set out in full in the opinion.

The Commission further finds as a fact that the fair value of the property of the applicants devoted to the public use and upon which they would be fully entitled to earn a return provided their system were in adequate condition, is \$352,500.50.

The Commission further finds as a fact that while the actual cost of maintenance and operation of the property, as judged by the two preceding years, is \$28,600 per annum. that, because of the condition of the system, said amount is excessive and unreasonable and that a reasonable annual amount for maintenance of this system is not in excess of \$21,000.

The Commission further finds as a fact that the proper amount for depreciation to be set aside annually by these applicants is \$21,150.03.

The Commission further finds as a fact that \$24,675 per annum is the maximum net earning to which these applicants are entitled under

the present condition of their facilities, but we do not find specifically that this is the proper amount but are willing to allow it under all the circumstances for the present.

The Commission further finds as a fact that the rate of 25 cents per thousand gallons with a minimum charge of \$1.25 per month, the applicants to furnish all meters and cost of connection, the user to furnish pipes upon his premises, is a just and reasonable rate for domestic consumers other than the La Mesa Mutual Water Company.

The Commission further finds as a fact that a rate of 15 cents per thousand gallons with a minimum monthly charge of \$100 is a just and reasonable rate to be charged for water to the La Mesa Mutual Water Company.

The Commission further finds as a fact that a rate of \$65 per miner's inch per annum is a just and reasonable rate for water delivered to consumers from the flume in the manner described in the opinion.

The Commission further finds as a fact that a rate of \$70 per miner's inch per annum is a just and reasonable rate for all present irrigation consumers from this system for whom a rate has not heretofore in this order been fixed.

And basing its order upon the above findings of fact and the further findings set out in the opinion herein,

*It is hereby ordered* that the applicants herein begin immediately the construction of a flume in lieu of the one now used, which flume shall be of a character satisfactory to this Commission after the plans therefor have been submitted to it, but shall in any event be a closed flume or conduit of suitable material to be determined on the submission of the plans to this Commission; and

*It is further ordered* that within thirty (30) days from the date of this order that the applicants file with this Commission plans and specifications of said flume; and

*It is further ordered* that said applicants take immediate steps to increase the available supply of water so that the same may be increased over the present available supply at least 33½ per cent. While the Commission does not at the present prescribe details with reference thereto it reserves and does not finally determine this question, and in the event that these applicants do not within a reasonable time in the opinion of the Commission begin the construction of other facilities than the ones specifically ordered herein, this particular matter being held open for decision and for the further submission of evidence, will again be considered by this Commission after due notice to the applicants and the parties hereto as required by law; and

*It is further ordered* that no additional consumers be added to this

system except domestic consumers under the terms hereinbefore in this opinion and order set out; and

*It is further ordered* that the following rates be and they are established as just and reasonable and the only rates to be charged by the applicants herein:

(1) For domestic use 25 cents per thousand gallons, with a minimum charge of \$1.25 per month, the applicants to furnish meters and cost of installation of all facilities, the consumer to furnish pipes upon his own premises.

(2) For water to the La Mesa Mutual Water Company for domestic use within the town of La Mesa, 15 cents per thousand gallons, with a minimum charge of \$100 per month.

(3) For water for irrigation purposes, except domestic purposes incident thereto, taken from the flume as hereinbefore described, \$65 per miner's inch per annum.

(4) For water for irrigation purposes, except domestic purposes incident thereto, other than that taken from the flume, \$70 per miner's inch per annum.

All of said rates to be charged under just and reasonable regulations as regards service as the company may adopt and this Commission approve, and shall apply on and after July 1, 1913, and before such time the applicants shall file with this Commission rates in accordance herewith, and

*It is further ordered* that each and every portion of this order is made in contemplation of the performance by the applicants of every other portion thereof, and that this order is not to be considered as separable, and that no rates other than the ones that are now being charged by these applicants may be charged or collected, until said applicants have complied with all of the provisions of this order or shall satisfy this Commission that they are in good faith proceeding to comply therewith.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of March, 1913.

## DECISION No. 537.

IN THE MATTER OF THE APPLICATION OF BOARD OF TRUSTEES CITY OF MADERA, MADERA COUNTY, CALIFORNIA, FOR PERMISSION TO CONSTRUCT SIXTH STREET AT GRADE ACROSS THE TRACKS OF CENTRAL PACIFIC RAILWAY COMPANY IN SAID CITY.

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Application No. 401.

*Decided April 1, 1913.*

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*R. E. Rhodes*, for Applicant.

*R. M. Drake*, for Central Pacific Railway Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

On February 11, 1913, board of trustees, city of Madera, Madera County, California, filed with the Commission application for permission to construct Sixth street at grade across the tracks of Central Pacific Railway Company in said city. The application was accompanied by an easement dated December 3, 1912, from the company granting the city permission to extend Sixth street across its right of way which is about 250 feet wide at this point.

Although the Commission in the majority of applications for street and public highway crossings at grade across railroads which have come before it has granted same *ex parte*, without a hearing, when accompanied by agreements or easements showing that the railroad companies do not object thereto, in this case it appeared from the maps filed and from the Commission's knowledge of the situation that perhaps public convenience and necessity did not demand the opening up of said Sixth street crossing, especially as the approaches thereto were obscured by buildings and warehouses on the tracks. Also, there was already a crossing over said tracks at Yosemite avenue one (1) block north of Sixth street. It was apparent that a grade crossing at Sixth street would be very dangerous to traffic.

Therefore, it was considered advisable to hold a public hearing on this application at which the necessity for the crossing and pertinent facts relating thereto would be ascertained. A hearing was held in the city of Madera on March 21st at which the interested parties were represented and testimony taken concerning the matters contained in the application.

It was shown that Yosemite avenue, the principal business street of the city, was the main crossing over the tracks of Central Pacific Railway Company between the east and west portions of the city. This crossing, although protected by gates operated by a flagman, is

very much congested, especially when the crossing is blocked as it frequently is by trains. The passenger depot is immediately north of Yosemite avenue. It was contended that the opening of Sixth street would relieve this congestion and permit traffic to flow more readily between the parts of the city on either side of the railroad. It was further stated that the crossing at Sixth street could be protected by gates operated by the same flagman that now operates Yosemite avenue gates, and hence the protection of the former would not impose very much additional expense upon the company. Furthermore, the rapid growth of the city demanded this additional street crossing over said tracks.

The nearest crossing to Yosemite avenue on the north is at Fourth street, two (2) blocks distant and on the south at Ninth street, four (4) blocks distant. There is a crossing, however, at Eighth street, which is not much used, as it is cut off on the west by a slough one (1) block from the railroad and is in the nature of a cul-de-sac. The city agreed that this crossing should be closed in case Sixth street was opened.

The railway company, although recognizing the dangers of grade crossings, appreciates the necessity for an additional opening across its tracks in Madera and having already granted an easement, states that it will have no objection to the Sixth street crossing.

It was the consensus of opinion of the witnesses for the city at the hearing that if Sixth street were opened it should be protected by crossing gates which could be operated from the same tower as the gates at the Yosemite avenue crossing are now operated.

Although the policy of the Commission, owing to the numerous serious accidents resulting in death and injury which are daily occurring at grade crossings in this state, is to avoid grade crossings of streets and public highways with railroads wherever it is practicable and possible to do so at reasonable expense, I am of the opinion that public convenience and necessity demand the granting of this application. The result of opening Sixth street will be to divide the traffic which now passes over Yosemite avenue crossing and avoid some of the congestion that now obtains there, due to the frequent unavoidable blocking of this crossing by trains. Also, I am of the opinion, that if the crossing at Sixth street is authorized, the present grade crossing at Eighth street should be abandoned and closed to public use. I, therefore, submit the following form of order.

#### ORDER.

Board of trustees, city of Madera, Madera County, California, having on February 11, 1913, filed with the Commission an application for permission to open Sixth street of said city at grade across the tracks



of Central Pacific Railway Company, and a hearing having been held upon said application at the city of Madera on March 21, 1913, at which all interested parties were represented, and testimony having been taken concerning the necessity and public demand for said crossing, and it appearing that it is not reasonable nor practicable to avoid a grade crossing with tracks of said company, and that the application should be granted subject to the conditions hereinafter specified,

*It is hereby ordered* that permission be hereby granted board of trustees, city of Madera, Madera County, California, to construct Sixth street at grade across the tracks of said company in said city, subject to the following conditions, viz:

(1) The cost of constructing the crossings across the tracks and right of way of said company in a good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) The cost of maintaining hereafter the approaches to the crossings in a safe condition for the passage thereover of vehicles and road traffic shall be borne by applicant up to within two (2) feet of the rails of the present track on the east side of the main line of said company; and up to within two (2) feet of the rails of industry the track on the west side of the main line of said company. The cost of maintaining hereafter the crossings over and between the tracks, and to a distance of two (2) feet outside the rails of said passing track on the east side and said industry track on the west side, shall be borne by said company.

(3) Said company shall construct and maintain at its own expense for the protection of said crossings, crossing gates of the same character and design as those now constructed and operated for the protection of the crossings at Yosemite avenue. Said gates may be operated from the same tower and by the same watchman as now operates the gates at Yosemite avenue.

(4) Said crossing at Sixth street shall be constructed of a width (parallel with the track) of not less than forty-eight (48) feet, with grades of approach not exceeding six (6) per cent and shall be ballasted with stone or gravel ballast to a depth of not less than six (6) inches across and between all tracks and for a distance of not less than twenty-four (24) feet on each side thereof, provided that the entire distance between the industry track and the sidetrack on the west side of the main line of said company before mentioned shall be ballasted as above specified.

(5) Said company shall provide and maintain at its own expense standard highway crossing signs for the protection of said crossings.

(6) As a condition precedent to the granting of this application, the present grade crossing at Eighth street shall be abandoned and closed to public use.

(7) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of April, 1913.

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DECISION No. 538.

IN THE MATTER OF THE APPLICATION OF MEXICO AND SAN DIEGO RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS RAILWAY AT GRADE, ACROSS TWENTY-TWO PUBLIC HIGHWAYS FROM AN INTERSECTION WITH THE TRACK OF THE SAN DIEGO AND SOUTH EASTERN RAILWAY COMPANY WITH NINTH STREET IN THE SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO TO THE PROPOSED TERMINUS IN IMPERIAL EXTENSION NO. 1, AND TO PURCHASE PROPERTY OF SAN DIEGO AND IMPERIAL BEACH RAILWAY COMPANY.

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Application No. 441.

*Decided April 1, 1913.*

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*Leovy & Leovy*, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application to construct a line of railway across twenty-two public highways in the southwestern portion of San Diego County, as will hereafter be indicated in greater detail, and to purchase certain ties and rails heretofore operated by what was known as the San Diego and Imperial Beach Railway Company.

Several years ago, the South San Diego Investment Company platted and started the sale of property in what is known as Imperial Beach, being unincorporated territory situated on the Pacific ocean, in the southwestern portion of San Diego County, south of the city of San Diego and a mile or more northerly from the Mexican boundary line. At that time the investment company laid a single track line of railway from the ocean beach to an intersection with the tracks of what was known as the Coronado Belt Line, now owned by the San

Diego and South Eastern Railway Company, the point of intersection being in the South San Diego Company's addition to South San Diego. This line of railroad was operated for a while by a gasoline motor car, but in or about April, 1911, an accident happened on this line of railroad, resulting in the loss of a life and in the payment of heavy damages by the South San Diego Investment Company. There are numerous sharp curves in the track as now laid, and the rails are entirely too light for operation. The stock of the South San Diego Investment Company has now been acquired by E. S. Babcock and L. M. Brown, who are planning to push the development of Imperial Beach. During the month of February, 1913, they incorporated the Mexico and San Diego Railway Company for the purpose of building a line of railway between the city of San Diego and a point on the boundary line between California and Mexico, near the Pacific ocean between Tia Juana and the Pacific ocean. The estimated length of the railroad is alleged to be about 18 miles. Capital stock to the amount of \$13,000 has been subscribed for and ten per cent thereof has been paid into a treasury, in accordance with the provisions of the Civil Code. It is proposed now, as a part of this railroad, to construct a new line of railroad from Imperial Beach to the tracks of the San Diego and South Eastern Railway Company in South San Diego, entirely through unincorporated territory, along the route designated in the application, being along what is known as Ninth street, in South San Diego, from the point of intersection with the tracks of the San Diego and South Eastern Railway Company across C, D, E, F, G, H, I, and J streets to Coronado avenue, thence westerly along Coronado avenue and across Tenth and Eleventh streets in South San Diego to a point in Imperial Beach to where said avenue intersects at right angles an avenue of the same name running northerly and southerly, thence running with two tracks, one northerly and one southerly along and upon said last named avenue, one of said tracks running southerly on said avenue and terminating on the southerly boundary of Encanto avenue in Imperial Beach Extension No. 1, and the other running northerly along Coronado avenue across Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth streets in Imperial Beach.

The applicant desires also to purchase the old ties and rails which seem to have belonged to the South San Diego Beach Company and to have been operated under the name of a company called the San Diego and Imperial Beach Railway Company. The old rails will be exchanged in so far as their value goes for new rails, to be used in connection with the new line of railroad and such of the ties as are still usable will also be used for the new line of railroad. It is proposed to operate the new line of railroad by means of two electric storage battery cars, and either to connect with trains of the San Diego and

South Eastern Railway Company or to secure trackage rights over a portion of the tracks of said company to a point of connection with said company's operated trains.

None of the streets to be intersected are graded, the entire territory with the possible exception of Coronado avenue and F street, being still in its natural condition.

Notices of the hearing were posted on the ground, as well as published in a San Diego paper, but no one appeared in opposition to the application.

I recommend that the application be granted and submit herewith the following form of order:

**ORDER.**

Mexico and San Diego Railway Company having applied for an order authorizing the construction of its line of railway at grade, across twenty-two (22) public highways in the proposed construction of its line of railroad from the intersection of the track of the San Diego and South Eastern Railway Company with Ninth street, in the South San Diego Company's addition to South San Diego, to the proposed terminus on the easterly boundary of Encanto avenue, in the subdivision known as Imperial Extension No. 1, which said streets are more specifically set out in the application herein, and to purchase the ties and rails owned by the South San Diego Investment Company, and several years ago operated under the name of San Diego and Imperial Beach Railway Company, and a public hearing having been held on said application,

*It is hereby ordered* that the application be, and the same is hereby granted subject to the following conditions, viz:

(1) The applicant shall at its own expense construct and hereafter maintain said twenty-two public highway crossings in good and first-class condition for the safe use of the public. The crossings at "F" street and near the westerly end of Coronado street shall be constructed at the time the track is laid. The crossings at the remaining streets shall be constructed as public necessity demands. The crossings shall be constructed of such width as may be necessary for the safe and convenient passage thereover of vehicles and other road traffic and shall be ballasted with gravel or other suitable material.

(2) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of April, 1913.

## DECISION No. 539.

IN THE MATTER OF THE APPLICATION OF OCEAN SHORE  
RAILROAD COMPANY FOR AUTHORITY TO ISSUE FIRST  
MORTGAGE BONDS OF THE FACE VALUE OF SEVEN  
HUNDRED THOUSAND DOLLARS.

Application No. 82.

*Decided April 1, 1913.*

The Ocean Shore Railroad Company applied for approval of issue of first mortgage bonds to secure a proposed loan of \$250,000. It appeared that, prior to the filing of the application, certain legal proceedings were begun and are pending against said company, involving, among other questions, the legality of the authorization of the bonds. Accordingly, further proceedings suspended until the court having jurisdiction shall have rendered its decision.

*McCutchen, Olney & Willard and A. C. Greene*, for Applicant.

*Edward Lynch and J. F. Bluzome*, for L. Guggenhime, Intervenor.

*J. Howard Smith*, Intervenor, *in propria persona*.

*Arthur Crane*, for Aalwyns Law Institute and others, Intervenor.

*Stratton, Kaufman & Torchiano*, and *Morrison, Dunne & Brobeck*, for

Carrie E. L. Folger, Intervenor.

## REPORT OF THE COMMISSION.

THELEN and LOVELAND, *Commissioners*.

This is an application for authority to issue first mortgage bonds of the face value of \$700,000 and to pledge the same to secure a loan from the Union Trust Company in the amount of \$250,000. The bonds constitute the total authorized bonded indebtedness of applicant. They are to be 6 per cent first mortgage gold bonds, are to be dated as of the first day of December, 1911, and are to be payable on the first day of December, 1916, unless sooner redeemed.

The proceeds from said loan of \$250,000 are to be expended for the following purposes:

|  |                    |
|--|--------------------|
| 1. To pay on account for real estate rights of way in the Potrero district in San Francisco and on terminal property at Twelfth and Mission streets, San Francisco, representing only a portion of the total cost of said properties ----- | \$90,091 17        |
| 2. To pay on account for equipment to complete the purchase of a steam shovel -----  | 4,000 00           |
| 3. To pay on account of locomotive to cost \$36,000, the sum of -----  | 20,500 00          |
| 4. To pay on account of forty freight cars, the total cost of which will be \$48,000, the sum of -----   | 33,000 00          |
| 5. To defray franchise requirements under franchises heretofore granted by the board of supervisors of the city and county of San Francisco -----  | 57,408 83          |
| 6. Terminal changes—moving to new terminal, including track work, crossings and new station buildings, a total cost of -----   | 45,000 00          |
|  | <hr/> \$250,000 00 |

Applicant states that the method of financing now proposed is only a temporary expedient, and that it will be necessary shortly to authorize a new bonded indebtedness to take up the indebtedness now proposed to be incurred, to release the five year bonds which it is now proposed to pledge, and to issue new long term bonds for permanent financing.

The following intervenors appeared: L. Guggenhime and J. Howard Smith, who are bondholders in the old Ocean Shore Railway Company, which company went through the hands of a receiver and was the predecessor of the present applicant; Aalwyns Law Institute and other stockholders in the late Ocean Shore Railway Company and creditors thereof, all appearing in one intervention and represented by Mr. Arthur Crane; and Carrie E. L. Folger, the owner of certain property in San Francisco which applicant is now seeking to condemn for terminal grounds.

While the receivership proceedings affecting the old Ocean Shore Railway Company were pending, all the bondholders of that company united in the selection of five trustees to protect their interests. Under certain authority concerning the extent of which there is a dispute between the present applicant and bondholders representing about 25 per cent of the total number of bondholders in the old Ocean Shore Railway Company, the trustees bought in the property of the Ocean Shore Railway Company at the receiver's sale, and after operating the property for a while, caused the incorporation of the present applicant, the Ocean Shore Railroad Company. The present applicant thereafter authorized the issue of the bonds concerning which this Commission's order is now asked. The intervenors contend that the trustees have acted in breach of trust in numerous matters, including the organization of the present applicant, and particularly that the steps which have been taken in connection with the authorization of the bond issue of \$700,000 have been null and void. There are now pending at least five suits in the Superior Court in and for the city and county of San Francisco, and one suit in the Federal courts, directly raising these questions. Applicant admits that there is a substantial point at issue. In one of the suits now pending before the Superior Court, and raising all the material issues, an answer was filed a few days ago, so that the matter is now at issue. All the parties agree that the decision of this case will settle all the material questions as to which there is dispute.

On the introduction of this evidence, the Commission confined its attention to the question of the effect of the pending suits on possible action by the Commission in this proceeding and on the possibility of securing from the courts a speedy determination of the questions there at issue. The parties agreed that within at least a few months a decision could probably be secured from the Superior Court. On

inquiry from the Commission, it appeared that the present directors of the applicant will probably be able to carry the railroad company for six months or so longer, even if a decision in this proceeding be deferred.

While this Commission desires to do everything in its power to expedite the rehabilitation of the applicant and to enable it to complete its line of railroad and fully equip its properties, we feel that in view of the fact that the very legality of the authorization of the bonds in this proceeding has been questioned and that a decision by the Superior Court may reasonably be expected within a few months, it would be wiser as a matter of policy to defer further proceedings on this application at least until the Superior Court has spoken. We hope that all parties will expedite the proceedings before the Superior Court so that the applicant's line of railway may be rehabilitated at the earliest possible date.

In reaching this decision we wish to be clearly understood that the mere fact that some one questions the right of a utility to issue securities will not necessarily result in a refusal on the part of this Commission to issue the securities desired. In the present case, however, the legal proceedings were brought long before any application was made to this Commission, and the proceedings admittedly raise a substantial issue and were brought in good faith. It appears also in this case that a decision by the Superior Court may reasonably be expected within a short time. In view of all these facts, we have reached the conclusion that further action in this proceeding should be deferred at least until the Superior Court has rendered its decision, whereupon the applicant may again apply to the Commission.

We recommend herewith the following form of order:

**ORDER.**

*It is hereby ordered* that further proceedings in the application entitled as above be suspended until the Superior Court of the State of California, in and for the city and county of San Francisco, has rendered its decision in one of the cases now pending before it, in which, among other things, is raised the issue of the legality of the authorization of the bonds whose issue this Commission is requested in the above entitled proceeding to authorize.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of April, 1913.

Decision No. 540, grade crossing : not printed. See end of volume.

DECISION No. 541.

IN THE MATTER OF THE APPLICATION OF PETALUMA AND SANTA ROSA RAILWAY COMPANY TO ISSUE EIGHTY THOUSAND DOLLARS OF FIRST MORTGAGE FIVE PER CENT BONDS, AND TO PLEDGE THEM AS COLLATERAL SECURITY FOR A NOTE OF SIXTY-FOUR THOUSAND DOLLARS.

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Application No. 449.

*Decided April 1, 1913.*

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Application granted, the bonds authorized to be pledged to be returned to the treasury of applicant upon the payment of the note and not issued again without proper application and authorization from the Commission.

*Edwin T. McMurray*, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an application by Petaluma and Santa Rosa Railway Company to issue \$80,000 of its first mortgage twenty-year five per cent bonds, and to pledge them as collateral security for a note of \$64,000, and to use the money to be secured thereby in the construction of 5.5 miles of electric railway line from Liberty Station, Sonoma County, on applicant's main line in a westerly direction, to a point known as Two Rock.

Applicant proposes to build this extension to take care of the business that is offered. Parties interested in the construction of the extension have offered to provide a bonus in the sum of \$19,000 if the projected line is in operation by August 1, 1913.

Petaluma and Santa Rosa Railway Company has submitted, as Exhibit E, an estimate of the total cost of the extension, in the sum of \$104,486.60. This estimate includes a figure for right of way, of \$10,200. It appears, however, that the right of way will cost applicant not more than \$1000. On the basis, therefore, as submitted, the extension may be built for \$95,000. Some of the estimates are clearly high, and it is entirely reasonable to believe that the 5.5 miles of line with the necessary switches and turn outs and overhead trolley construction, can be built for approximately \$90,000. Of this sum, Petaluma and Santa Rosa Railway Company will raise \$64,000 through the medium of its note, and \$19,000 as a bonus, leaving the balance of about \$7,000 to be supplied from applicant's treasury.

Petaluma and Santa Rosa Railway Company has an authorized



and outstanding issue of capital stock to the amount of \$1,000,000, divided into 10,000 shares of the par value of \$100 each. It has a total bonded indebtedness of \$896,000, of which \$679,000 represents the first mortgage bonds, and \$217,000 the issue of second mortgage bonds. For the fiscal year ending June 30, 1912, applicant showed a net income before charging off depreciation, of \$43,541.06.

After a hearing and full inquiry, I am of the opinion that the purposes for which Petaluma and Santa Rosa Railway Company desires to pledge its bonds and issue its note are entirely proper, as contemplated by the Public Utilities Act, and I recommend that the application be granted.

I submit herewith the following form of order:

**ORDER.**

Petaluma and Santa Rosa Railway Company having made application to this Commission for authority to issue \$80,000 of its first mortgage five per cent twenty-year bonds, and to pledge them as collateral security for a note of the face value of \$64,000, and to use the proceeds of said note in the construction of an extension of its line of railway from Liberty Station, Sonoma County, 5.5 miles westerly to a point known as Two Rock,

And a hearing having been duly held and it appearing that the purposes for which applicant desires to pledge its bonds and issue its note are not properly chargeable to operating expenses or to income,

Petaluma and Santa Rosa Railway Company is hereby authorized to issue \$80,000 of its first mortgage five per cent twenty-year bonds and to pledge them as collateral security for a note in the sum of \$64,000, and Petaluma and Santa Rosa Railway Company is hereby authorized to issue its promissory note of the face value of \$64,000 upon the following conditions, and not otherwise:

1. Upon the payment of the note in the sum of \$64,000, said bonds in the sum of \$80,000 must be returned to the treasury of applicant and not issued again without proper application and authorization from this Commission.

2. Said note in the sum of \$64,000 shall bear interest not to exceed six per cent, and the date of its maturity shall not be beyond five years from the present time.

3. Applicant shall receive face value for its note in the sum of \$64,000.

4. The proceeds from said note in the sum of \$64,000 shall be applied upon the construction of the 5.5 miles of electric railway to be built from Liberty Station, Sonoma County, to Two Rock, as specified in applicant's Exhibit E on file with this Commission.

5. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the

sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

6. The authority hereby granted to pledge bonds and to issue a promissory note, shall apply only to such bonds and such note as may be issued before April 1, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of April, 1913.

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DECISION No. 542.

IN THE MATTER OF THE APPLICATION OF CARRIERS PARTIES TO PACIFIC FREIGHT TARIFF BUREAU EXCEPTION SHEET No. 1-B, C. R. C. No. 52, TO AMEND SAME TO PROVIDE THAT ON SHIPMENTS OF HAY, STRAW, INCLUDING BEAN STRAW AND CACTUS LEAVES, CLASS RATES WILL APPLY ONLY WHERE COMMODITY RATES ARE NOT OTHERWISE SPECIFICALLY PROVIDED. ALSO APPLICATION BY SAME CARRIERS TO INCREASE THE MINIMUM WEIGHT ON HAY IN CARLOADS TO TWENTY-FOUR THOUSAND POUNDS, WHEN LOADED IN CARS OVER FORTY FEET IN LENGTH TO AND INCLUDING FIFTY FEET IN LENGTH, INSIDE MEASUREMENT.

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Case No. 259.

*Decided April 1, 1913.*

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Applicants permitted to amend Pacific Freight Tariff Bureau Exception Sheet 1-B, C. R. C. No. 52, to provide a minimum weight on hay, straw, including bean straw, and cactus leaves of 20,000 pounds for cars over 36 feet 6 inches in length but not including 40 feet in length, inside measurement; and 24,000 pounds for cars of 40 feet in length and over to and including 52 feet in length, inside measurement; and denied permission to amend same to provide that class rates on said commodities apply only in the absence of specific commodity rates.

*F. W. Gompf*, for Pacific Freight Tariff Bureau.

*H. G. Toll*, for Southern Pacific Company.

*A. P. Matthew*, for Western Pacific Company.

*J. J. Geary*, for Northwestern Pacific Railroad Company.

*H. P. Anewalt*, for Atchison, Topeka and Santa Fe Railway Company.

*Sceth Mann*, for Traffic Bureau of the Merchants' Exchange of San Francisco.

*J. O. Bracken*, for Scott, Magner & Miller.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This was an application on the part of the carriers parties to the Pacific Freight Tariff Bureau to amend Item 63 of Exception Sheet No. 1-B, C. R. C. No. 52, covering minimum carload weights for hay and straw, including bean straw compressed in bales, and cactus leaves, dried in packages, to read:

“Cars over 36 feet 6 inches in length to and including 40 feet in length inside measurement, minimum weight 20,000 pounds.

Cars over 40 feet in length to and including 52 feet in length inside measurement, minimum weight 24,000 pounds.”

Also to provide that Class C rate will apply only in the absence of specific commodity rates.

At the hearing the carriers requested permission to amend the application to read as follows:

“Cars over 36 feet 6 inches in length to but not including 40 feet in length inside measurement, minimum weight 20,000 pounds.

Cars 40 feet in length and over to and including 52 feet in length inside measurement, minimum weight 24,000 pounds.”

At the hearing the carriers introduced considerable testimony to prove that shippers would experience no difficulty in loading cars to the minimum weights mentioned in the amended application.

The testimony of the shippers with reference to their ability to load cars to the proposed minimums was conflicting in many respects. One witness testified that he had never experienced any difficulty in loading 24,000 pounds in a 40-foot car, while another witness testified that the ability to load 24,000 pounds in a 40-foot car depended entirely on the width and height of such cars.

We have called on the carriers to furnish considerable data which would enlighten the Commission on this subject, and I am of the opinion that with proper loading, and perhaps a little care in baling, shippers would experience no difficulty in loading cars to the minimum weights as covered by the applicants' amended application.

From a most minute examination of a great mass of statistics we have selected at random a few cars, principally those of 40 feet in length, of various widths and heights, which we set out below:

## POINT OF SHIPMENT.

## Livermore.

| Car.        |        | Length.   | Width.           | Height.          | Weights. |
|-------------|--------|-----------|------------------|------------------|----------|
| GH&SA ..... | 34378  | 40 feet   | 9 feet 2 inches  | 9 feet 2½ inches | 28,800   |
| OR&N .....  | 12212  | 40½ feet  | 8 feet 6½ inches | 8 feet 0½ inch   | 24,400   |
| SP .....    | 85875  | 40½ feet  | 8 feet 6½ inches | 8 feet 0½ inch   | 28,800   |
| SP .....    | 85529  | 40½ feet  | 8 feet 6 inches  | 8 feet           | 27,200   |
| SP .....    | 85648  | 40½ feet  | 8 feet 6 inches  | 8 feet           | 28,000   |
| SP .....    | 85316  | 40½ feet  | 8 feet 6 inches  | 8 feet           | 24,600   |
| SP .....    | 85637  | 40½ feet  | 8 feet 6 inches  | 8 feet           | 20,400   |
| SP .....    | 21691  | 40½ feet  | 9 feet 2 inches  | 9 feet 2½ inches | 25,200   |
| SP .....    | 81940  | 36 feet   | 8 feet 6 inches  | 8 feet           | 23,590   |
| SP .....    | 82150  | 39.5 feet | 8 feet 2½ inches | 7 feet 2½ inches | 17,370   |
| LW .....    | 33027  | 40 feet   | 8 feet 6 inches  | 8 feet           | 27,420   |
| IC .....    | 142725 | 40½ feet  | 8 feet 6½ inches | 8 feet 0½ inch   | 24,520   |
| UP .....    | 73752  | 40½ feet  | 9 feet 2 inches  | 9 feet 2 inches  | 22,800   |
| UP .....    | 71093  | 40 feet   | 8 feet 6½ inches | 8 feet 0½ inch   | 23,600   |
| UP .....    | 74114  | 40 feet   | 9 feet 2 inches  | 9 feet 2½ inches | 23,600   |
| SP .....    | 66767  | 36 feet   | 8 feet 2½ inches | 6 feet 7½ inches | 19,000   |
| OSL .....   | 12513  | 36 feet   | 8 feet 9 inches  | 7 feet 4 inches  | 19,500   |
| SP .....    | 77563  | 36 feet   | 8 feet 0½ inch   | 7 feet 1 inch    | 20,200   |
| SP .....    | 86327  | 40 feet   | 8 feet 6½ inches | 8 feet 0½ inch   | 25,360   |
| TNO .....   | 31114  | 39.5 feet | 8 feet 2 inches  | 7 feet 2 inches  | 22,320   |
| GHSA .....  | 31949  | 36 feet   | 8 feet 6 inches  | 8 feet           | 24,200   |
| SP .....    | 80415  | 39.5 feet | 8 feet 2½ inches | 7 feet 2½ inches | 22,940   |
| SP .....    | 81742  | 36 feet   | 8 feet 6 inches  | 8 feet           | 24,310   |
| UP .....    | 70664  | 40 feet   | 8 feet 6½ inches | 8 feet 0½ inch   | 28,660   |
| SP .....    | 86086  | 40 feet   | 8 feet 6½ inches | 8 feet 0½ inch   | 26,500   |

## Pleasanton.

|           |       |          |                  |                  |        |
|-----------|-------|----------|------------------|------------------|--------|
| O&C ..... | 88429 | 40 feet  | 8 feet 6½ inches | 8 feet 0½ inch   | 30,400 |
| UP .....  | 71328 | 40½ feet | 8 feet 6½ inches | 8 feet 0½ inch   | 28,400 |
| SP .....  | 17420 | 40 feet  | 9 feet 2 inches  | 9 feet 2½ inches | 20,000 |
| SP .....  | 16633 | 40 feet  | 9 feet 2 inches  | 9 feet 2½ inches | 20,000 |
| SP .....  | 86007 | 40 feet  | 8 feet 6½ inches | 8 feet 0½ inch   | 27,600 |
| MLT ..... | 33147 | 40 feet  | 8 feet 6 inches  | 8 feet           | 33,000 |

## POINT OF SHIPMENT--Continued.

## Hollister.

| Car.   |        | Length.  | Width.           | Height.          | Weights. |
|--------|--------|----------|------------------|------------------|----------|
| SP     | 87501  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 26,530   |
| SP     | 86998  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 25,780   |
| UP     | 73746  | 40½ feet | 9 feet 2 inches  | 9 feet 2 inches  | 31,590   |
| UP     | 71999  | 40½ feet | 8 feet 6½ inches | 8 feet 0¼ inch   | 20,100   |
| CM&STP | 76784  | 40 feet  | 8 feet 6 inches  | 8 feet           | 25,440   |
| UP     | 75100  | 40½ feet | 9 feet 2 inches  | 10 feet          | 26,860   |
| CBQ    | 110470 | 40 feet  | 8 feet 7 inches  | 7 feet 9¾ inches | 27,410   |
| CBQ    | 108898 | 40 feet  | 8 feet 7 inches  | 7 feet 9¾ inches | 21,380   |
| MLT    | 33372  | 40 feet  | 8 feet 6 inches  | 8 feet           | 22,110   |
| LW     | 33086  | 40 feet  | 8 feet 6 inches  | 8 feet           | 22,350   |
| CRIP   | 62937  | 40 feet  | 9 feet           | 10 feet          | 25,700   |
| MLT    | 33319  | 40 feet  | 8 feet 6 inches  | 8 feet           | 21,390   |
| UP     | 70845  | 40½ feet | 8 feet 6½ inches | 8 feet 0¼ inch   | 23,220   |
| UP     | 70819  | 40½ feet | 8 feet 6½ inches | 8 feet 0¼ inch   | 27,200   |
| UP     | 73668  | 40 feet  | 9 feet 2 inches  | 9 feet 2 inches  | 28,600   |
| SP     | 22764  | 40 feet  | 9 feet 2 inches  | 9 feet 2¼ inches | 27,870   |
| UP     | 72185  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 28,420   |
| SP     | 85130  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 22,380   |
| UP     | 50025  | 50 feet  | 8 feet 7 inches  | 9 feet 3 inches  | 31,480   |
| UP     | 71779  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 22,850   |
| GHSA   | 33991  | 40 feet  | 8 feet 6 inches  | 8 feet           | 27,070   |
| SP     | 86578  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 24,630   |
| SP     | 76424  | 36 feet  | 8 feet 0½ inch   | 7 feet 1 inch    | 21,296   |
| UP     | 71524  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 20,720   |
| GHSA   | 31875  | 36 feet  | 8 feet 6 inches  | 8 feet           | 23,570   |
| UP     | 71774  | 40 feet  | 8 feet 6½ inches | 8 feet 0¼ inch   | 25,750   |

## Concord.

|     |       |         |                  |                  |        |
|-----|-------|---------|------------------|------------------|--------|
| SP  | 88696 | 40 feet | 8 feet 6½ inches | 8 feet 0¼ inch   | 25,140 |
| SP  | 23032 | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 32,520 |
| SP  | 21475 | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 33,160 |
| SP  | 21211 | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 29,630 |
| SP  | 20854 | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 37,450 |
| SP  | 16747 | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 32,540 |
| SP  | 22875 | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 23,360 |
| OSL | 9075  | 40 feet | 8 feet 6½ inches | 8 feet 0¼ inch   | 29,740 |
| UP  | 70918 | 40 feet | 8 feet 6½ inches | 8 feet 0¼ inch   | 28,740 |
| SP  | 16705 | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 35,870 |

## Byron.

|        |        |         |                  |                  |        |
|--------|--------|---------|------------------|------------------|--------|
| SP     | 87173  | 40 feet | 8 feet 6½ inches | 8 feet 0¼ inch   | 23,630 |
| GH     | 34727  | 40 feet | 9 feet 2 inches  | 9 feet 2¼ inches | 35,100 |
| CGW    | 24396  | 40 feet | 8 feet 6 inches  | 8 feet 6 inches  | 28,620 |
| STL&SF | 124812 | 40 feet | 8 feet 6 inches  | 8 feet           | 24,880 |

## Walnut Creek.

|      |       |         |                  |                |        |
|------|-------|---------|------------------|----------------|--------|
| OW   | 10067 | 40 feet | 8 feet 6½ inches | 8 feet 0¼ inch | 25,890 |
| SP   | 85807 | 40 feet | 8 feet 6½ inches | 8 feet 0¼ inch | 27,700 |
| GHSA | 34311 | 40 feet | 8 feet 6 inches  | 8 feet         | 29,600 |
| SP   | 61387 | 40 feet | 9 feet 2 inches  | 10 feet        | 40,070 |

## POINT OF SHIPMENT—Continued.

## Hughson.

| Car.     |       | Length. | Width.           | Height.           | Weights. |
|----------|-------|---------|------------------|-------------------|----------|
| AT ----- | 41116 | 40 feet | 8 feet 8½ inches | 7 feet 11½ inches | 24,900   |
| AT ----- | 40737 | 40 feet | 8 feet 8½ inches | 7 feet 11½ inches | 25,225   |

## Hemet.

|            |       |         |                  |                |        |
|------------|-------|---------|------------------|----------------|--------|
| O&WN ----- | 10185 | 40 feet | 8 feet 6½ inches | 8 feet 0½ inch | 30,940 |
|------------|-------|---------|------------------|----------------|--------|

## Perris.

|          |       |         |                 |        |        |
|----------|-------|---------|-----------------|--------|--------|
| AT ----- | 26348 | 36 feet | 8 feet 6 inches | 8 feet | 24,135 |
| AT ----- | 23618 | 36 feet | 8 feet 6 inches | 8 feet | 24,660 |
| AT ----- | 43815 | 36 feet | 8 feet 6 inches | 8 feet | 24,560 |

Mr. Murphy testifying as to the conditions at Hollister stated, on page 71 of transcript, that in his opinion 24,000 pounds could not be loaded in an ordinary 40-foot car at Hollister. An examination of the statistics furnished certainly proves that this is not a fact.

I invite particular attention to car UP 72185, loaded at Hollister in month of August, and containing 28,420 pounds of hay; car SP 85130, loaded in the same month, and being of identical dimensions, was loaded with 22,380 pounds. Again, car GH&S 33991, which is slightly smaller in dimensions than either of these cars, was loaded with 27,070 pounds. Attention is also directed to cars UP 71524 and 71774, being cars of identical dimensions, one containing 5,000 pounds more than the other.

I would again call attention to shipments from Hollister in CB&Q 110470 and CB&Q 108898. Both of these cars are of the same length, width and height. In one instance a car is loaded to 27,410 pounds while the other is loaded to 21,380 pounds.

It is apparent after an examination of these figures and the large amount of data before us that if the shippers will exercise proper care in loading cars no difficulty should be encountered in loading them to the minimums requested by the applicants.

I am particularly impressed by the fact that car UP 73746 was loaded at Hollister and contained 31,590 pounds; car UP 50025, also loaded at Hollister, contained but 31,480 pounds notwithstanding it was approximately 10 feet longer than the other car containing approximately the same weight.

From the records it would appear that shippers will not experience difficulty, if proper attention is given to loading, to load cars in excess of 36 feet 6 inches in length at least 20,000 pounds. We find very

few, if any, cars of this length which have not been loaded above 20,000 pounds.

Under all the circumstances of the case, and after a careful review of loading records of hundreds of cars, I am of the opinion that so far as the application concerns the minimum weight, it should be granted.

As to that portion of the application dealing with the proposition to apply class rates only in the absence of specific commodity rates: I do not believe this presents a case where the rule of the Commission that class or commodity rates, whichever are lower, should apply, should be broken down. As to this feature of the application I recommend that same be denied.

The following order is recommended:

**ORDER.**

Application having been made by carriers party to the Pacific Freight Tariff Bureau Exception Sheet 1-B, C. R. C. No. 52, to amend same and provide changes in minimum weights on hay, straw, including bean straw and cactus leaves, carload lots, and to provide that class rates on these commodities apply only in the absence of specific commodity rates, and a hearing having been duly held,

*It is hereby ordered* that the applicant of the carriers to provide in said exception sheet a minimum weight for cars over 36 feet 6 inches in length to but not including 40 feet in length inside measurement of 20,000 pounds, and for cars of 40 feet in length and over to and including 52 feet in length inside measurement of 24,000 pounds, be and is hereby granted.

It is further ordered that the application of the carriers to provide that class rates will apply only in the absence of specific commodity rates be and is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of April, 1913.

DECISION No. 543.  
CITY OF PALO ALTO  
*vs.*  
PALO ALTO GAS COMPANY.

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Case No. 288.

*Decided April 2, 1913.*

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REPORT OF THE COMMISSION.

ORDER ON PETITION OF PALO ALTO GAS COMPANY.

Palo Alto Gas Company this day filed with this Commission its petition after decision in the above entitled case, requesting this Commission to provide for the proper division between the Pacific Gas and Electric Company and the Palo Alto Gas Company of the rate of one dollar and twenty cents (\$1.20), established by this Commission for gas to be supplied by the Palo Alto Gas Company to the inhabitants of the city of Palo Alto. The Palo Alto Gas Company secures its gas at wholesale from the Pacific Gas and Electric Company. The petitioner asks that if it be necessary, the Pacific Gas and Electric Company be cited in this proceeding.

The complaint in the above entitled proceeding was for the establishment of just and equitable rates for gas to be supplied to the inhabitants of the city of Palo Alto. The people of Palo Alto are not concerned with the division of this rate between the Palo Alto Gas Company and the Pacific Gas and Electric Company and the division of that rate is not one of the issues in the case. While the Commission made certain findings as to what would be at least a reasonable return to each of the two companies for their respective services, the Commission made no order as to how the total rate should be divided between the two companies, nor could it properly do so under the pleadings of the case.

If either the Palo Alto Gas Company or the Pacific Gas and Electric Company desire to have this Commission establish the compensation which shall be paid by the Palo Alto Gas Company to the Pacific Gas and Electric Company, an entirely new proceeding for that purpose should be instituted.

*It is accordingly ordered* that the said petition of Palo Alto Gas Company be and the same is hereby dismissed.

Dated at San Francisco, California, this 2d day of April, 1913.



## DECISION No. 544.

IN THE MATTER OF THE APPLICATION OF BIG FOUR ELECTRIC RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF FOUR HUNDRED THOUSAND SHARES OF CAPITAL STOCK, PAR VALUE FOUR HUNDRED THOUSAND DOLLARS.

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Application No. 372.

*Decided April 3, 1913.*

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Applicant asked for permission to issue \$400,000 par value of capital stock and to use same in the construction and equipment of its proposed railroad estimated to cost \$510,000. Upon previous petition (Application No. 144), applicant was authorized to issue \$100,000 capital stock, to be applied to same purpose, upon the condition, among others, that construction should not be commenced until a cash fund of \$50,000 had been realized from the sale of the stock. This condition has not been complied with, and applicant having taken stock subscriptions, subject to installment payments as construction proceeds, now asks approval of a contract entered into with Hahn & Sons for the completion of the grading of its right of way, the contractors to be paid out of installments due upon the completion of this class of construction. Also applicant having, without authorization, exchanged certain of its shares of capital stock for certain shares of the capital stock of Tidewater and Southern Railway Company.

*Held*, In approving the said contract for grading, the Commission must not be understood as establishing a precedent for other cases, or for other classes of construction work in this case; that before applicant is permitted to make expenditures for the laying of ties or rails on its proposed line, applicant shall have received and have on hand from the sale of stock, sufficient money to indicate that the enterprise can successfully be completed, and that applicant be required to impound all moneys received from past or future sales of stock, and to obtain the consent of the Commission prior to making any expenditure from the money so impounded.

*Held*, Applicant cannot be permitted to include in its assets the 4,000 shares of Tidewater and Southern Railway Company stock, nor can the Commission recognize as valid the issuance of the 6,000 shares of applicant's stock given in exchange therefor.

Application granted, certain restrictions and conditions being imposed in the above and other respects.

*Frank A. Duryea*, for Applicant.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Big Four Electric Railway Company was incorporated in May, 1912, for the purpose of constructing and operating a standard gauge electric railway from Tulare via Woodville and Poplar to Porterville and also from Tulare to Visalia, the total distance covered by these proposed lines being approximately 41.25 miles. The company has an authorized capital stock of 500,000 shares of the par value of \$500,000, all of which stock is common. On September 10, 1912, the Commission

made its order in Application No. 144, being the application of Big Four Electric Railway Company for permission to issue 100,000 shares of its capital stock. The Commission permitted the company to issue this stock upon certain conditions, one of the conditions being that the company should not commence the construction of its line of railroad until \$50,000 in cash had been realized from the sale of the stock and placed at the disposal of applicant. This condition was inserted for the purpose of requiring the company, prior to expending money for the construction of this railroad, to accumulate a sum which would indicate the presence of financial support reasonably sufficient to carry the enterprise through to completion. Applicant has never been able to satisfy this condition and hence is not at present engaged in constructing its line of railroad. To date, however, applicant has procured approximately 15 miles of right of way and also has about seven miles of its proposed line already graded, this grading having been done prior to the issuance of the order of this Commission already mentioned.

Applicant now has subscriptions to 89,654 shares of the 100,000 shares authorized to be issued. This leaves 10,346 of the authorized shares still unsubscribed. Of the subscribed stock, applicant has actually issued 12,320 shares.

The present financial condition of applicant is represented in the following balance sheet, as of January 31, 1913:

| ASSETS.   |              |
|---|--------------|
| Cost of road -----  | \$11,853 13  |
| General expenditures -----  | 7,208 87     |
| Tidewater and Southern Railway Company stock -----                          | 6,000 00     |
| Cash -----  | 383 04       |
| Accounts receivable (Avery Investment Co.) -----                            | 2,447 03     |
| Accounts receivable (subscriptions to capital stock) -----                  | 34,884 50    |
| Notes receivable (account subscriptions to capital stock) ----              | 33,550 00    |
| Unamortized discount on capital stock -----                                 | 1,908 00     |
| Treasury stock (authorized by Railroad Commission but not negotiated) ----- | 10,346 00    |
|   | <hr/>        |
|   | \$108,670 57 |
| LIABILITIES.  |              |
| Capital stock—common -----  | \$100,000 00 |
| Notes payable -----   | 4,750 00     |
| Accounts payable -----  | 3,873 22     |
| Hospital fund -----   | 47 35        |
|   | <hr/>        |
|   | \$108,670 57 |

The third item mentioned in this balance sheet represents 4,000 shares of stock of the Tidewater and Southern Railway Company now held by applicant. This stock was received from a stockholder of the Tidewater and Southern Railway Company, applicant giving in exchange therefor, 6,000 shares of its capital stock. This transaction not being

authorized by this Commission was clearly illegal under the provisions of section 51b of the Public Utilities Act reading as follows:

“No public utility shall hereafter purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this State, without having been first authorized to do so by the Commission.”

Applicant, therefore, holds this stock of the Tidewater and Southern Railway Company without legal authority, and also has issued in exchange therefor 6,000 shares of its capital stock without compliance with the conditions imposed upon the issuance of applicant's stock in this Commission's order in Application No. 144. The attention of applicant was drawn to this matter in the order of the Commission made upon Application No. 144, and applicant has already been advised to dispose of this stock.

The Commission cannot permit applicant to include in its assets this 4,000 shares of Tidewater and Southern Railway Company stock, nor can it recognize as valid the issuance of the 6,000 shares of applicant's stock given in exchange therefor. The only course open to applicant is to annul this transaction, which, of course, includes a refund of the commissions, if any, paid for the purported sale of this 6,000 shares of applicant's stock. I recommend that applicant be given sixty days within which to dispose of the Tidewater and Southern Railway stock now held by applicant.

The fifth item in this balance sheet shows that the Avery Investment Company owes applicant the sum of \$2,447.03. The Avery Investment Company has been engaged in selling stock for applicant and, according to the testimony of Mr. C. L. Russell, secretary of the Big Four Electric Railway Company, the Avery Investment Company has been overpaid in commissions in the sale of stock to the amount of \$2,447.03. Applicant intends, by withholding commissions on present subscriptions to stock, as installments on such subscriptions fall due, to reimburse itself for this amount. I recommend, however, that applicant be required to also withhold all commissions payable upon stock subscriptions which may be taken by representatives of the Avery Investment Company in the future until this sum of \$2,447.03 has been paid.

As already stated, applicant has been unable to procure the \$50,000 in cash required by the Commission as a condition precedent to commencing the construction of applicant's line. Applicant, however, at the hearing presented a plan which it desires to put into effect as follows:

Applicant states that it is convinced that if it is allowed to begin the construction of its line, the sale of stock would be greatly facilitated, enterprise. Applicant has certain stock subscriptions which have been for the reason that it is far easier to arouse interest in a progressing

taken in the various cities through which applicant proposes to construct its line, which stock subscriptions provide that a certain installment in cash shall be due and payable when the line of applicant has been graded to the city in question, and that a further installment shall be due and payable when the ties have been laid to this point, and the final installment due and payable when the rails have been laid to this point.

Applicant further stated that it had assurances of obtaining similar subscriptions to the amount of at least \$60,000 in the city of Porterville and \$40,000 in the city of Visalia. Mr. W. H. Hahn, of the firm of Hahn & Sons, of Modesto, has entered into an arrangement with applicant, subject to the approval of this Commission, whereby Hahn & Sons shall proceed with the grading of applicant's line, in consideration of receiving an assignment of a portion of the installments due upon stock subscriptions as each of the different cities is reached. In case there should not be enough of these installments falling due to pay Hahn & Sons for their work, Hahn & Sons have agreed to receive in stock the remainder of the amount due them. In this manner applicant will be able to complete the grading of all of its proposed line without the expenditure of any cash. Applicant has presented this arrangement to the Commission in the form of a contract between applicant and Hahn & Sons, which contract the Commission is asked to approve. This arrangement, however, covers only the grading of applicant's road, and I, therefore, urge upon applicants the necessity of diligently prosecuting the sale of its stock while the grading of its road is in progress, in order that when the grading is completed applicant will not be confronted with the same difficulties with which it is now faced.

I do not wish to impose conditions upon the issuance of applicant's stock which will terminate the existence of the company. I, therefore, recommend that the Commission approve the contract submitted by Hahn & Sons. In approving this contract, however, the Commission must not be understood as establishing a precedent for other cases or for other classes of construction work in this case.

I am still of the opinion, however, that before applicant is permitted to make expenditures for the laying of ties or rails on its proposed line, applicant shall have received and have on hand from the sale of stock, sufficient money to indicate that the enterprise can be successfully completed. I, therefore, recommend that applicant be required to impound all moneys received from past or future sales of stock, and that applicant be required to obtain the consent of this Commission prior to making any expenditure from the money so impounded. It should be provided in the order, however, that this latter requirement should not apply to the expenditures arising under the terms of the

grading contract already mentioned, nor should it apply to the necessary current office expenses of applicant.

I am of the opinion that \$250 per month will cover the current office expenses of applicant. Inasmuch, however, as the use of applicant's central office is devoted in part to the work of selling stock, I recommend that one half of this \$250 allowance be provided from commissions on the sale of stock.

Applicant estimates that the actual cost of the proposed road in money will be \$510,000. In Exhibit "D" to the application, applicant gives a detailed estimate of the cost of constructing this road, which may be summarized as follows:

|   |              |
|---|--------------|
| Rights of way and real estate -----                 | \$27,500 00  |
| Grading -----                                       | 31,033 50    |
| Bridges and culverts -----                          | 20,928 20    |
| Ties, rails, switches, ballast and tracklaying----- | 299,780 00   |
| Roadway tools -----                                 | 2,000 00     |
| Fences, crossings and signs -----                   | 15,000 00    |
| Telephone line -----                                | 9,000 00     |
| General office and fixtures -----                   | 2,000 00     |
| Shop machinery and tools -----                      | 10,000 00    |
| Fuel storage -----                                  | 3,000 00     |
| Engineering -----                                   | 15,841 67    |
| Locomotive and cars -----                           | 32,500 00    |
| Legal expenses -----                                | 9,901 04     |
| Stationery, printing, insurance and taxes -----     | 12,000 00    |
| Contingencies and interest -----                    | 18,715 59    |
|   | <hr/>        |
|   | \$510,000 00 |

So far, applicant has obtained subscriptions to \$89,654 par value of stock, from which, however, must be eliminated the 6,000 shares given in exchange for the 4,000 shares of Tidewater and Southern Railway Company stock. This leaves 83,654 shares now subscribed. This stock is to be distributed in small amounts among a number of persons. It would be preferable in the development of a large enterprise of this kind if the energies of the company were directed rather toward interesting persons of large financial influence. The management of the sale of applicant's stock has not been conducted in a manner which would stimulate confidence in the success of the enterprise and in my opinion should be revised so as to place more emphasis on the development of the enterprise and less on the accumulation of stock commissions. If this suggested change is carried out, in my opinion applicant's chances of success will be greatly increased.

I recommend the following form of order:

#### ORDER.

Big Four Electric Railway Company having applied to this Commission for permission to issue its capital stock to the amount of \$400,000 for the purpose of constructing its proposed line of railroad from Tulare to Porterville and also from Tulare to Visalia, and a

public hearing having been held upon this application, and the Commission being of the opinion that the purposes for which this stock is to be issued are not in whole, or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that Big Four Electric Railway Company be and the same hereby is authorized to issue 400,000 shares of its capital stock of the par value of \$400,000 upon the following conditions and not otherwise, to wit:

1. The stock herein authorized to be issued shall be sold at a price which will net applicant not less than eighty per cent of the par value thereof.

2. No commissions shall be paid, except upon cash actually received by applicant from the sale of stock, and such commissions shall not exceed twenty per cent of the cash so received.

3. No commission upon past or future sales of stock by the Avery Investment Company, or by its representatives, shall be paid by applicant until the entire amount of the present indebtedness of the Avery Investment Company to applicant has been paid in full.

4. The proceeds from the sale of the stock herein authorized to be issued shall be used, subject to the other conditions specified in this order, for the following purposes only:

(a) To discharge the outstanding indebtedness of applicant, which on January 31, 1913, amounted to \$8,670.57.

(b) In constructing and equipping applicant's proposed line of railroad and the procuring of rights of way therefor, the expenditures for this purpose to be made in accordance with the estimates submitted by applicant in Exhibit "D" attached to the application in this proceeding, and a summary of which is set forth in the foregoing opinion.

5. Applicant shall impound all money received upon past or future sales of stock and shall make no expenditure from the money so received, unless specifically authorized to do so by this Commission. The Commission, however, gives its approval at this time to the grading contract entered into by applicant and Hahn & Sons, a copy of which contract is attached to the application in this proceeding, and marked Exhibit "E." The Commission also at this time gives applicant authority to assign to Hahn & Sons the installments upon stock subscriptions, which, by the terms of said contract, are to be assigned to Hahn & Sons in payment for the work of grading applicant's line of road. The Commission also gives applicant authority to make a monthly expenditure of \$125 for current office expenses.

6. Applicant shall not enter into any contract nor incur any liability or obligation of whatever kind, other than is included in said grading contract with Hahn & Sons, and other than the allowance for office

expenses of \$125 per month, unless the approval of this Commission has first been obtained thereto.

7. Applicant shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the stock herein authorized to be issued, and on or before the twenty-fifth day of each month shall make a verified report to the Commission, stating the sale or disposition of said stock during the preceding month, the terms of such sale or other disposition and the application of the money realized from such sale or disposition, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

8. The authority herein granted to issue stock shall apply only to stock issued prior to January 1, 1914.

*It is further ordered* that within sixty days from the date of this order applicant shall dispose of the 4,000 shares of Tidewater and Southern Railway stock now held by applicant, and upon the disposal of said stock applicant shall file with the Commission an affidavit stating that applicant has disposed of said stock.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of April, 1913.

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DECISION No. 545.

IN THE MATTER OF THE APPLICATION OF J. R. ANDERSON FOR AN ORDER PRELIMINARY TO THE ISSUE OF A CERTIFICATE DECLARING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES UNDER A FRANCHISE APPLIED FOR BUT NOT GRANTED.

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Application No. 469.

*Decided April 4, 1913.*

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*J. R. Anderson, in propria persona.*

*K. L. Acker, for City of Oakdale.*

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application under the provisions of section 50c of the Public Utilities Act for an order declaring that this Commission will

hereafter, upon application, issue a certificate that public convenience and necessity require the exercise of rights and privileges under a franchise applied for by applicant from the city of Oakdale, California, but not yet granted.

Mr. Anderson testified at the hearing that he desired to establish a gas distributing system in the city of Oakdale, which city now has a population of about 1,600 people; that the proposed system would cost approximately \$40,000, which amount Mr. Anderson stated that he was prepared to expend. Applicant has applied to the city of Oakdale for a franchise to operate this gas distributing system, and a copy of the proposed franchise is attached to the application in this proceeding and marked Exhibit "A." Mr. Anderson also stated that he had considerable experience in constructing and developing gas distributing systems in Ontario and Upland in this State, and also in Medford and Ashland, in the State of Oregon. Mr. R. L. Acker, city clerk of Oakdale, appeared in behalf of the board of trustees of that city. Mr. Acker stated at the hearing that there had never been a gas distributing system in the city of Oakdale, and that the city was very anxious at present to have such a system installed. He also stated that the board of trustees had held a public meeting, at which the matter of having such a system established within the city had been discussed, and that there was no opposition to the proposal of Mr. Anderson to establish a gas distributing system within the city of Oakdale. I am of the opinion that public convenience and necessity demand the granting of this application and submit herewith the following form of order:

**ORDER.**

J. R. Anderson having applied to this Commission for an order, under section 50c of the Public Utilities Act, declaring that this Commission will hereafter upon application, issue a certificate that public convenience and necessity require the exercise of rights and privileges under a franchise which has been applied for but not yet secured from the city of Oakdale, a copy of the proposed franchise being attached to the application in this proceeding and marked Exhibit "A," and a public hearing having been held upon this application, and the Commission being of the opinion that this application should be granted,

*It is hereby ordered* that the above entitled application be and the same hereby is granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of April, 1913.



## DECISION No. 546.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY (COAST LINES), BOCA AND LOYALTON RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM), TONOPAH AND TIDEWATER RAILWAY COMPANY, AND WESTERN PACIFIC RAILWAY COMPANY, TO AMEND LOCAL AND INTERDIVISION JOINT TARIFF NO. 1, C. R. C. SUPPLEMENT NO. 1 TO C. R. C. NO. 2, COVERING BAGGAGE RULES, RATES AND CHARGES BY LIMITING THE SIZE OF ANY PIECE OF BAGGAGE WHICH WILL BE HANDLED FREE.

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Case No. 256.

*Decided April 4, 1913.*

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Local and Interdivision Joint Tariff No. 1, C. R. C. Supplement No. 1 to C. R. C. No. 2, as amended and filed by applicants December 10, 1911, heretofore approved, except as to Rule 13½, in opposition to which appeared representatives of various commercial organizations. Said proposed rule limits the size of baggage and provides charges on excess dimensions. As this matter involved questions similar to those comprehended in the case before the Interstate Commerce Commission concerning the adoption of Rule 10, the decision herein was delayed pending the determination by the Federal board.

*Held*, That the practice of checking extraordinarily large and unwieldy pieces of baggage is growing and will continue to grow if not stopped. It is also evident that it is a serious inconvenience to the traveling public generally, tending as it does to delay passenger trains and make it difficult to store such baggage in the car and adding also to the danger of the men working in the baggage car. The best interests of the traveling public generally will be served and no one will be greatly injured by limiting the length of trunks, but that the limitations on dimensions as asked for by applicant should not be granted.

*Held*, Inasmuch as the Public Utilities Act of California, effective March 23, 1912, under the provisions of which this Commission acquires and discharges its duties as a regulatory body, contains no specific reference to what may be termed "baggage privileges," Section 31 of said act is relied upon to show that the matters and things involved in this case are clearly within the jurisdiction of the Commission.

Order entered in conformity with the decision of the Interstate Commerce Commission and with the rule as to transportation of baggage recently adopted by the Dominion of Canada.

*Geo. D. Squires, Chas. S. Fee, F. S. Howard and E. B. Carson*, for Southern Pacific Company.

*E. W. Camp, J. J. Byrne, H. Isaacs and P. Walsh*, for Atchison, Topeka and Santa Fe Railway Company.

*T. C. Davison and T. C. Peck* for San Pedro, Los Angeles, and Salt Lake Railroad Company.

*E. L. Lomax and C. R. Miller*, for Western Pacific Railway Company.

*Seth Mann, William R. Wheeler and Austin Sperry, for Traffic Bureau of the Chamber of Commerce of San Francisco.*

*E. N. Clintsman, for Pacific Coast Commercial Travelers.*

*J. C. Berendsen, for Hinz & Landt, Incorporated.*

*G. M. Belden, for Andrew A. Jacob & Company.*

*George James, for Holm Millinery Company.*

#### REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

The practice of common carriers of extending to their patrons the privilege of having transported free their personal effects or baggage has existed for many years and the use or alleged misuse of this privilege has, from time to time, been the subject of disagreements between the carriers and their patrons, resulting in litigation and judicial decisions.

Previous to the passage of the amendment to the act to regulate interstate commerce of June 18, 1910, the act contained no specific provision relating to the interstate transportation of baggage, except in connection with the issuance of joint interchangeable mileage tickets. Previous to that, under the authority granted the Commission by section 6 of the act, carriers had been required to publish and file their general baggage regulations and their schedules of excess baggage. Section 1 of the act, as amended on June 18, 1910, reads as follows:

It is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce \* \* \* just and reasonable regulations and practices affecting classifications, \* \* \* the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, \* \* \* the carrying of personal, sample, and excess baggage.

Previous to the passage of this amendment, the term baggage had been understood to mean personal baggage, consisting of wearing apparel, toilet articles and similar effects necessary and appropriate for the wear, use, comfort and convenience of the passenger and for the purposes of the journey, but not intended for other persons or for sale. The passage of the amendment, as will be observed, included samples as baggage.

The necessity for the regulation which the carriers now ask for, it is alleged, arises from two sources: first, the coming into use of "wardrobe" or "innovation" trunks, bulging at the top or sides and frequently at the top and one or two sides, and the extending of the definition of baggage to include samples.

Wardrobe or sample trunks are purposely constructed with the bulging end or sides or end and sides to prevent other baggage being piled upon them. If only trunks of this character were to be loaded into a baggage car, it would be an easy matter to handle them, but the

varying sizes and shapes of articles offered as baggage make it absolutely necessary that the different pieces be piled in tiers in the car, which cannot be done or, at best, can only be done with difficulty with the wardrobe or innovation trunks.

With the passage of the amendment to the act to regulate commerce, including "samples" as baggage, carriers allege that the traveling representatives of commercial and manufacturing establishments began to offer as baggage trunks or containers of unusual shape, large and unwieldy in size. They further allege that the handling of baggage of this sort interfered with the time schedules of passenger trains, thus inconveniencing the public generally and that such forms of baggage which were piled with difficulty in the baggage cars were also dangerous to their employees.

After various conferences extending over a period of about two years, the carriers, subject to the Interstate Commerce Commission, finally adopted a rule, known as Rule 10, as to handling baggage of excess size, which rule was regularly promulgated and filed with the Interstate Commerce Commission as required by law. Immediately thereafter, the Commission received many protests against the rule and its effective date was suspended pending investigation by the Commission.

On December 10, 1911, the common carriers mentioned as applicants in this hearing adopted Local and Interdivision Joint Tariff No. 1. C. R. C. Supplement No. 1 to C. R. C. No. 2, which contained, amongst other rules, the following:

**BAGGAGE OF EXCESS SIZE.**

**RULE 13 $\frac{1}{2}$ .** (a) Effective July 1, 1912, for any piece of baggage (baggage is defined in Rules 1 and 2) of any class (excepting immigrant baggage checked at port of entry) the greatest dimension of which exceeds forty-five (45) inches, an additional charge for each additional inch will be made equivalent to the charge for ten (10) pounds of excess baggage. The minimum charge for baggage of excess size is twenty-five (25) cents.

(b) Effective July 1, 1914, for any piece of baggage (baggage is defined in Rules 1 and 2) of any class (excepting immigrant baggage checked at port of entry) the greatest dimension of which exceeds forty (40) inches, an additional charge for each additional inch will be made equivalent to the charge for ten (10) pounds of excess baggage. The minimum charge for baggage of excess size is twenty-five (25) cents.

Examples effective July 1, 1912, and remaining in effect until July 1, 1914:

1. If a trunk is forty-seven (47) inches long and the other dimensions do not exceed forty-five (45) inches, the extra charge would be computed on the basis of two (2) inches. Where ticket fare is six dollars (\$6.00) extra charge for excess size is twenty-five

(25) cents. (The minimum charge for any shipment of baggage of excess size is 25 cents.)

2. If a trunk is forty-six (46) inches wide and fifty (50) inches long and the third dimension does not exceed forty-five (45) inches, the extra charge would be computed on the basis of six (6) inches. Where the ticket fare is six dollars (\$6.00), extra charge for excess size is sixty (60) cents.

3. If a trunk is forty-seven (47) inches wide, forty-seven (47) inches high and fifty (50) inches long, the extra charge would be computed on basis of nine (9) inches. Where the ticket fare is six dollars (\$6.00), extra charge for excess size is ninety (90) cents.

NOTE—The rule in regard to baggage of excess size does not apply to articles named in Rule 3 and Rule 19, (public entertainment, paraphernalia) and Rule 20, (corpses).

The filing of this tariff with this Commission was followed, as in the case of the filing of Rule 10 with the Interstate Commerce Commission, by numerous protests from shippers and commercial bodies representing shippers, such protests relating to Rule 13½ quoted above. As a result of such protests, the Commission approved of Local and Interdivision Joint Tariff No. 1, C. R. C. Supplement No. 1 to C. R. C. No. 2, except as to Rule 13½, the approval of which was suspended pending the hearing which the Commission thought wise to hold on the matter.

The issues were finally joined and the case heard on May 16, 1912, an adjourned hearing being also held on June 25, 1912. At the later hearing, at the request of the carriers, the Commission and many of the protestants visited Third and Townsend streets, San Francisco, where they were given a demonstration of the difficulties of loading baggage into a car, such baggage as they saw thus loaded being declared to be fairly representative of the baggage ordinarily received.

Considerable testimony was introduced at the hearings by the carriers in support of their contention that the rule which they desired to make was a reasonable one. Mr. E. L. Bevington, secretary of the Transcontinental Passenger Association, testifying for applicants, presented an argument setting forth the reasons why the carriers desired to adopt regulations as set forth in Rule 13½.

Inasmuch as the carriers rested their case largely upon the testimony of Mr. Bevington, as set forth in this argument, I quote the reasons advanced by him for the adoption of the rule:

BASIS UPON WHICH FORTY (40) INCHES WAS DETERMINED AS THE MAXIMUM DIMENSION.

#### Dimensions of Baggage Cars.

The largest baggage cars are 108 inches wide inside. From this we must deduct five (5) inches for radiators, leaving a net space of 103 inches. On account of bridges, tunnels, space between double tracks and for other mechanical reasons, it is not possible to extend the width of baggage cars. The maximum has also been reached

in the \*length of baggage cars. Baggage car doors range from four (4) feet to six (6) feet wide and six (6) feet high.

Length of longest baggage car (C&A) 73 feet 2½ inches, buffer to buffer.

A very few baggage cars have doors wider than six (6) feet; hence, we have a space eight (8) feet and seven (7) inches in width in which to tier baggage and an opening of from four (4) feet to six (6) feet through which to load it. As these figures are approximately the maximum in baggage car construction, it follows that materials carried in baggage cars must conform in size to these dimensions.

#### WHAT CONSTITUTES REASONABLE REGULATIONS.

Any regulation which facilitates the loading, unloading and transportation of baggage and conduces to the comfort and convenience of the great majority of the traveling public, is, *prima facie*, a "reasonable regulation and practice" in the sense contemplated by the law. Transportation is facilitated by keeping the size of single pieces of baggage within a reasonable compass. To determine what constitutes reasonable limitations in that regard, we must consider the means and methods of transporting baggage and all of the operations incident thereto. These must be the controlling factors.

As previously stated, we have a width of 103 inches at our disposal in baggage cars. An aisle must be maintained through the center of the car between the tiers of baggage to provide working space for the prescribed duties of the baggageman and to enable him to load and unload his car. When large quantities of baggage of the wardrobe or "innovation" type, with hoods or apexes, or of the kind, five (5) feet or more in length, used by millinery houses, etc., are presented, it is practically impossible to tier the baggage so as to preserve an aisle or to utilize the space to the best advantage; hence, the question arises: What should be the maximum dimension of baggage to insure these necessary conditions? An aisle at least 23 inches wide is absolutely necessary; deducting 23 inches from 103 inches, the total available space, and we have 80 inches in which to tier baggage. Allowing one half of this space on either side of the car establishes 40 inches as the maximum dimension of each piece of baggage. Thus the limit is fixed by the inexorable conditions of transportation.

#### COMPARATIVE STATEMENT OF SIZE OF TRUNKS NOW IN USE.

Ninety per cent of the trunks now in use for personal wearing apparel measure forty (40) inches in their greatest dimension or less. Hence, not more than ten (10) per cent of the traveling public can possibly be incommoded by the new rule. Of that ten (10) per cent, probably the majority can fit into the new rule

\*Originally baggage cars did not exceed thirty-five (35) feet in length.

without pecuniary loss; the remainder will suffer no embarrassment except that arising from the payment of one tenth of the excess baggage rate for each inch exceeding forty (40) inches. In connection with this argument, it may be claimed that if only ten (10) per cent of the trunks exceed forty (40) inches in length, the carriers might continue the present practice, but such an answer is untenable for the reason that the tendency of trunk manufacturers, commercial houses, and the traveling public generally is to manufacture and use the larger trunks, and, if no steps are taken to restrict the size, the ten (10) per cent will gradually increase to fifteen (15) per cent, then to twenty (20) per cent, and so on. The use of trunks of excessive size and "freakish" shapes has grown prodigiously during the past five years.

SAFETY OF MEN EMPLOYED IN BAGGAGE CARS.

Another important consideration is that of the safety of the men employed in baggage cars. It is sometimes necessary to tier large pieces on small ones. When rounding curves baggage so tiered oftentimes topples over, thus endangering the lives of train baggagemen. This danger would be minimized or avoided if the baggage were of uniform size.

In commenting on the large and unwieldy trunks, Mr. Wm. C. Likly of Messrs. Henry Likly & Co., baggage makers, Rochester, New York, and president of the Trunk Manufacturers' Association, says:

"There are very few sample trunks carried that measure over 45 inches or 46 inches in the longest dimension. Some manufacturers of what are known as Clothing Model trunks (that is, trunks that are made to carry samples of ready made clothing) make trunks as long as 68 or 70 inches. These trunks, we believe, should be cut out just as much as possible. In addition to the fact that they upset all the arrangement in a baggage car, they are bad things to handle *and should be handled with a derrick instead of by the baggagemen themselves.*"

Testimony in opposition to the adoption of Rule 13½ was offered by the representatives of the various commercial organizations, proprietors or representatives of wholesale millinery establishments, dealers in general merchandise, trunk manufacturers and dealers in whips, such testimony tending principally to show the injury which the adoption of the rule would work to their business.

After a full and complete presentation of the case, counsel for applicants and protestants united in a request to this Commission, that, inasmuch as the case before this Commission involved questions similar to those comprehended in the case before the Interstate Commerce Commission, the rendering of an opinion in this case await the decision of the Interstate Commerce Commission, when, if thought necessary, further hearing could be held.

Upon receipt of the decision of the Interstate Commerce Commission, this Commission communicated with counsel for applicants and protestants, with the result that the case was submitted without further hearing.

Inasmuch as the Public Utilities Act of California, effective March 23, 1912, under the provisions of which the Railroad Commission acquires and discharges its duties as a regulatory body, contains no specific reference to what may be termed "baggage privileges," I quote the following section of that act to show that the matters and things involved in this case are clearly within the jurisdiction of this Commission :

Section 31. The Railroad Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the State and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

From the testimony of Mr. Bevington which, in respect to the portion to which I am referring, was undisputed, it is evident that the practice of checking extraordinarily large and unwieldy pieces of baggage is growing and will continue to grow if not stopped. It is also evident that it is a serious inconvenience to the traveling public generally, tending as it does to delay passenger trains and make it difficult to store such baggage in the car and adding also to the danger of the men working in the baggage car.

His testimony and exhibits offered by him show that little difficulty will be found in packing the commercial samples in 40-inch trunks. The wholesale interests most seriously affected will probably be the wholesale millinery business. But it is to be hoped that the necessity for large sample trunks or containers in this business, arising very largely from the craze for huge dimensions in women's hats, will not continue very long, and sample trunks or containers of forty-five inches, any dimensions, will, I trust, relieve the wholesale milliners from embarrassment in handling their samples.

He testified also, which testimony was supported by statistics, that less than five per cent of the total traffic carried as baggage is commercial traffic.

While this may be true, as to the commercial traffic being only five per cent of the total traffic, I am of the opinion that the carrying of this five per cent of commercial traffic as baggage is of much greater importance to the public generally than a much larger per cent of other baggage traffic. The modern methods of conducting business demand that every reasonable facility be afforded to the representatives of our large commercial and manufacturing institutions in the transportation of their sample baggage.

While I am of the opinion that the best interests of the traveling public generally will be served and that no one will be greatly injured by limiting the length of trunks, I am not convinced that the limit should be that asked for in the application. After a careful consideration of the testimony offered and of all of the circumstances of the case, I find as follows:

(1) That it is unreasonable to offer, for checking as baggage, trunks or other pieces of large and unwieldy size, and that the carriers are entitled to charge extra for the transportation of such pieces of personal or sample baggage, subject to the exception of whips, noted hereafter.

(2) That, instead of limiting the size of baggage to be carried free, to forty inches, greatest dimension or dimensions, as prayed for in the application, with an excess charge of ten pounds for each inch over forty inches, such limitation shall be forty-five inches, greatest dimension or dimensions, with an extra charge of five pounds for each inch above forty-five inches.

(3) That the carriers are entitled to limit the length of any piece to be checked as baggage to seventy-two inches, instead of seventy inches, as prayed for, but that in view of the fact that it would work a hardship upon the owners and users of such pieces to at once discontinue their use, carriers should continue to accept such pieces as baggage for one year from the date of this opinion and order.

(4) That carriers may reasonably provide that, on and after one year from the date of this order, trunks or other containers made of stiff material with more than two bulging sides or with two bulging sides that are not opposite to each other will not be accepted for checking as baggage.

(5) Salesmen's catalogues should be included in the definition of sample baggage.

(6) As to the exception to (1), as noted above, whips should be checked as baggage when offered in flexible cases not exceeding ninety inches in length nor twelve inches in diameter at the base nor one hundred pounds in weight. (We call the attention of any one who would criticise this as a discrimination in favor of whips, to the fact that the law does not provide that there shall be no discrimination, but simply that such discrimination shall not be undue. Whips are in a class by themselves, and we believe that this discrimination in their favor is not undue.)

(7) Any charge for excess baggage, whether from weight or dimensions, or both, should relate to the minimum charge and if a charge for both weight and dimensions does not exceed the minimum charge, only the minimum charge shall be collected.

(8) Carriers' rules should permit checking of such articles as tents or blankets of campers or bundle of tents or blankets of workmen, the



gun case or fishing apparatus of the sportsman, the easel of the artist or books of a student or other articles of analogous character necessary to the passenger and the checking of which has arisen from the fact of his making the journey.

It may be stated that this opinion and order are in conformity with the decision of the Interstate Commerce Commission, and also with the rule as to transportation of baggage recently adopted by the Dominion of Canada.

Common carriers not parties to this application should be notified that the filing of baggage rule rates, charges and classifications for their roads with this Commission, conformable to this opinion and order, and the approval of such rules, rates, charges and classifications by the Commission, will be sufficient to bring them within the operation of this opinion and order without the formality of an application therefor, but that until such rules, rates, charges and classifications have been filed with and approved by this Commission, they must adhere to and be governed by the rules, rates, charges and classifications now on file with the Commission.

I recommend the following order:

**ORDER.**

Whereas, on December 10, 1911, there was filed with the Railroad Commission of the State of California by the Atchison, Topeka and Santa Fe Railway (coast lines), Boca and Loyaltan Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, Southern Pacific Company (Pacific system), Tonopah and Tidewater Railway Company, and Western Pacific Railway Company, an application to amend Local and Interdivision Joint Tariff No. 1, C. R. C. Supplement No. 1 to C. R. C. No. 2; and

Whereas said application has heretofore been granted in part and approved, except as to Rule 13 $\frac{1}{2}$ , objections to which rule had been received by this Commission; and

Whereas at later dates, to wit, on May 16, 1912, and June 25, 1912, hearings, after due notice, were regularly held by this Commission, at which hearings applicants and protestants appeared and gave testimony; and

Whereas this Commission has made its findings, as set forth in the opinion preceding this order; now, therefore,

*Be it and it is ordered* that complainants, Atchison, Topeka and Santa Fe Railway (coast lines), Boca and Loyaltan Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, Southern Pacific Company (Pacific system), Tonopah and Tidewater Railway Company, and Western Pacific Railway Company, be and they are hereby granted permission to publish and put into effect, on intrastate business, baggage rules, rates, charges and classifications comprehending

the findings of fact by this Commission, the provisions of which shall be as follows:

That the size of baggage, trunks or other containers shall be limited to forty-five inches, any dimensions, and that excess, at the rate of the charge for five pounds for each inch above forty-five inches, shall be charged.

That on and after one year from the date of this opinion and order, trunks or other containers made of stiff material with more than two bulging sides or with two bulging sides that are not opposite to each other will not be accepted to be checked as baggage.

That salesmen's catalogues shall be included in the definition of baggage.

That whips, when offered in flexible cases not exceeding ninety inches in length nor twelve inches in diameter at the base nor one hundred pounds in weight, shall be checked as baggage.

That on and after one year from the date of this opinion and order, the length of any piece to be checked as baggage (except whips), shall be limited to seventy-two inches.

That where excess, arising from weight or dimensions, or both, does not exceed the minimum charge, only the minimum charge shall be collected.

That such articles as tents or blankets of campers or tents or blankets of workmen, gun cases, fishing apparatus, artists' easels and materials, books of students, or other articles of analogous character, necessary to the passenger and the checking of which has arisen from his making the journey, shall be checked as baggage.

Common carriers not parties to this application should be notified that the filing of baggage rules, rates, charges and classifications for their roads with this Commission, conformable to this opinion and order, and the approval of such rules, rates, charges and classifications by the Commission, will be sufficient to bring them within the operation of this opinion and order without the formality of an application therefor, but that until such rules, rates, charges and classifications have been filed with and approved by this Commission, they must adhere to and be governed by the rules, rates, charges and classifications now on file with the Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of April, 1913.

Decisions Nos. 547 and 548, grade crossings; not printed. See end of volume.

DECISION No. 549.

IN THE MATTER OF THE APPLICATION OF GEORGE W. KITCHEN FOR PERMISSION TO CONSTRUCT A GAS PLANT AT MADERA, STATE OF CALIFORNIA, AND FOR A CERTIFICATE THAT THE PRESENT AND FUTURE PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE SAME.

Application No. 454.

*Decided April 5, 1913.*

*Henry E. Carter*, for Applicant.

*Raleigh E. Rhodes*, for City of Madera.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

Applicant asks for a certificate that public convenience and necessity require the construction of a gas plant and distributing system in the city of Madera, and for a certificate that public convenience and necessity require the exercise of rights and privileges under a franchise from said city granted on the 21st day of October, 1912.

Madera is a community supplied with electric light and power, but not supplied with gas service, and there is no doubt that the citizens are in real need of this latter service.

There are no protests against the building of this plant and the furnishing of the citizens with gas, but on the contrary, the representatives of the city urge that the Commission grant authority to the applicant to proceed.

Applicant has practically completed his plant, and while he commenced the construction thereof without the consent of this commission, it is clear from the testimony that this was done with no intention to violate the law, but through a misapprehension. Therefore, I recommend that no proceedings be taken against applicant because of this violation of the Public Utilities Act.

The testimony showed that applicant expects about 300 consumers upon the completion of his plant, and that this plant is capable of providing for 1,000 consumers, so that a reasonable expansion is provided for.

I recommend that the application be granted and submit herewith the following form of order:

ORDER.

Application having been made to the Railroad Commission of the State of California by George W. Kitchen for a certificate that public convenience and necessity require the construction of a gas plant and

distributing system in the city of Madera, California, and for a certificate that public convenience and necessity require the exercise of rights and privileges under a franchise from said city of Madera heretofore granted the predecessor in interest of applicant and of which said franchise applicant is now the owner, said franchise being dated the 21st day of October, 1912, a copy of which is attached to the application herein, and a hearing having been duly held and it appearing to the Commission and it is hereby found as a fact that public convenience and necessity require the construction of a gas plant and distributing system in the city of Madera, California, and that public convenience and necessity require the exercise of rights and privileges under a franchise heretofore granted by the city of Madera for the construction and operation of said gas plant and distributing system in said city,

*It is hereby ordered* by the Railroad Commission of the State of California,

1. That public convenience and necessity require the construction of a gas plant and distributing system by George W. Kitchen in the city of Madera, California.

2. That public convenience and necessity require the exercise of rights and privileges by George W. Kitchen under a franchise heretofore granted by the city of Madera to Harry I. Maxim, and by him assigned to applicant, said franchise being dated the 21st day of October, 1912.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of April, 1913.

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DECISION No. 550.

IN THE MATTER OF THE APPLICATION OF A. A. WEBER  
FOR A CERTIFICATE THAT PUBLIC CONVENIENCE  
AND NECESSITY REQUIRE THE EXERCISE OF FRAN-  
CHISE RIGHTS, APPLIED FOR TO THE CITY OF DINUBA.

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Application No. 363.

*Decided April 7, 1913.*

*Edwards & Smith*, for the City of Dinuba.

*A. A. Weber*, for himself.

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REPORT OF THE COMMISSION.

**EDGERTON**, Commissioner.

This is an application that public convenience and necessity require the construction of a gas plant and distributing system, and that public

convenience and necessity require the exercise of rights and privileges under a franchise applied for to the city of Dinuba by applicant, but not yet granted, and for an order authorizing applicant to mortgage said gas plant and distributing system.

Under a misapprehension as to the law, applicant without the consent of this Commission has proceeded to build a gas generating plant and install a distributing system in the city of Dinuba, so that at the present time the entire plant is very nearly completed. However, upon being informed of the law, applicant promptly applied to this Commission for appropriate action, and I, therefore, recommend that no proceedings be taken by this Commission against applicant for his failure to comply with the law.

Dinuba is a town of between 1,800 and 2,000 population, and it is estimated that there will be 400 gas consumers immediately upon the completion of this plant. The plant, it is testified to, is capable of providing service for three or four times this number of consumers, so that any reasonable increase in the number of consumers within four or five years can be supplied.

No franchise has been granted by the city, because the city authorities were under the impression that it would be first necessary to gain this Commission's consent. However, the city trustees appeared at the hearing and declared that they were ready and willing to advertise a franchise for sale at the earliest possible moment.

It is insisted by the city, with the consent of applicant, that any franchise which may be granted shall contain two important provisions, one fixing a maximum rate of \$1.25 per thousand cubic feet, and the other that the city shall have the right at any time within three years from the date of the sale of the franchise to purchase the plant for \$25,000, plus the cost of extension, etc.

There is no gas now being produced or supplied in the town of Dinuba, and the community is very much in need of such service.

The mortgage asked to be authorized has already been executed, is dated the 9th day of January, 1913, and is made by A. A. Weber, mortgagor, to W. B. Nichols and others, mortgagees. This mortgage is on a part of the plant of applicant, and it secures a promissory note for the principal sum of \$5,500, payable on or before January 8, 1914, with interest at 8 per cent per annum.

The money obtained through the execution of this note and mortgage was used in the building of the plant and is the only obligation outstanding against it.

No form of franchise has been prepared, and I recommend that this application be granted with the condition that it become effective only upon the approval by the Commission of a franchise granted to

applicant for the construction of said gas plant and distributing system in the city of Dinuba.

I submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by A. A. Weber for a certificate that public convenience and necessity require the construction of a gas plant and distributing system in the city of Dinuba, California, and for a certificate that public convenience and necessity require the exercise of rights and privileges under a franchise from said city of Dinuba, which said franchise has been applied for but has not yet been granted, and for an order authorizing applicant to mortgage his said gas plant and distributing system in the city of Dinuba;

And a hearing having been duly held, and it appearing to the Commission, and it is hereby found as a fact, that public convenience and necessity require the construction of a gas plant and distributing system in the city of Dinuba, California, and that public convenience and necessity require the exercise of rights and privileges under a franchise applied for but not yet granted by the city of Dinuba for the construction and operation of said gas plant and distributing system in said city, and that the mortgaging of said gas plant and distributing system is proper,

*It is hereby ordered* by the Railroad Commission of the State of California,

1. That public convenience and necessity require the construction of a gas plant and distributing system by A. A. Weber in the city of Dinuba, California.

2. That public convenience and necessity require the exercise of rights and privileges under a franchise now applied for, but not yet granted by said city of Dinuba.

3. That A. A. Weber is hereby authorized to mortgage the said gas plant and distributing system for the principal sum of \$5,500 with interest at 8 per cent per annum thereon, said mortgage to be in form and substance as set out in a copy of said mortgage attached to the application herein.

Provided that as a condition precedent to the effectiveness of this order there shall be submitted for the approval of the Commission a franchise granted by the city of Dinuba to applicant to construct and operate a gas plant and distributing system in said city.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of April, 1913.

## DECISION No. 551.

IN THE MATTER OF THE APPLICATION OF TUJUNGA  
WATER AND POWER COMPANY FOR AN ORDER AU-  
THORIZING THE ISSUE OF BONDS TO THE FACE VALUE  
OF THREE HUNDRED THOUSAND DOLLARS.

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Application No. 262.

*Decided April 7, 1913.*

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## REPORT OF THE COMMISSION.

## ORDER OF DISMISSAL.

This is an application by Tujunga Water and Power Company for an order authorizing the issue of \$300,000 face value of bonds.

A hearing on this application was held in Los Angeles on October 29, 1912, and at this hearing the city of Los Angeles protested against the granting of this application on the ground that development of water by applicant with the proceeds from the sale of the bonds herein asked to be authorized would interfere with certain water rights of said city.

At the request of applicant and the city the hearing was continued without date, in order that both parties might more thoroughly prepare the case for presentation to the Commission.

Thereafter, on January 8, 1913, applicant filed a motion for a dismissal of the application on the ground that applicant was not a public utility under the jurisdiction of the Railroad Commission. Thereafter, on April 7, 1913, applicant withdrew said motion and substituted therefor a motion to dismiss said application, without specifying any grounds therefor. Wherefore,

*It is hereby ordered* that the application herein be and the same hereby is dismissed.

Dated at San Francisco, California, this 7th day of April, 1913.

Railroad Commission of the State of California.

## DECISION No. 552.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING IT TO ISSUE, SELL AND DELIVER, TO THE AMOUNT OF FIVE MILLION DOLLARS ITS BONDS KNOWN AND DESIGNATED AS "GENERAL AND RE-FUNDING MORTGAGE GOLD BONDS (SERIES A, BEARING FIVE PER CENT INTEREST PER ANNUM, DUE JANUARY 1, 1942)," WHICH BONDS ARE TO BE ISSUED UNDER AND SECURED BY ITS GENERAL AND RE-FUNDING MORTGAGE, DATED DECEMBER 1, 1911, EXECUTED BY SAID PACIFIC GAS AND ELECTRIC COMPANY TO BANKERS' TRUST COMPANY, CORPORATE TRUSTEE, AND FRANK B. ANDERSON, INDIVIDUAL TRUSTEE.

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Application No. 210.

*Decided April 7, 1913.*

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*Charles P. Cutten, for Applicant.*

REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

This is a supplemental application by Pacific Gas and Electric Company asking for the permission of this Commission to expend a portion of the proceeds from the sale of \$5,000,000 of bonds, as authorized in the order of this Commission of September 14, 1912, for purposes other than there specified. In its supplemental application Pacific Gas and Electric Company asks that the purposes for which the proceeds from the sale of the \$5,000,000 of bonds might be expended be enlarged to include projects to cost \$3,485,043. At the hearing, however, the application was narrowed to a request for authority to expend a portion of the proceeds from said bonds for the so-called "Bear River Development" in Placer County, in the sum of \$590,000. This development provides for the enlarging of twenty-two miles of the Bear River Canal, in Placer County, from its present capacity of fifty cubic feet per second to a capacity of three hundred and fifty cubic feet per second. It is proposed to use the water, after it has served for power development, for purposes of irrigation in Placer County.

The Bear River Canal work is closely related to and in reality is an extension of the general scheme comprehended in the Lake Spaulding and Drum power plant development.

There remains at this time unexpended \$94,077.44 of the proceeds



from the sale of the \$5,000,000 of bonds authorized for the Lake Spaulding and Drum power plant development and other projects enumerated in Application No. 210.

I see no reason why applicant should not be authorized to carry on said Bear River Canal work at the same time with the Lake Spaulding and Drum power development, and for this purpose it will be necessary that some part of the moneys derived from the sale of the above mentioned \$5,000,000 of bonds be used.

I recommend, therefore, that the application be granted, and submit the following form of order:

**ORDER.**

Pacific Gas and Electric Company having applied to this Commission for authority to expend a portion of the proceeds derived from the sale of \$5,000,000 of its general and refunding five per cent gold bonds, due January 1, 1942, for the purpose of enlarging twenty-two miles of the Bear River Canal, in Placer County, from its present capacity of fifty cubic feet per second to a capacity of three hundred and fifty cubic feet per second; and a hearing having been held, and it appearing that the purposes for which it is proposed to apply the proceeds from the sale of said bonds are not in whole or in part reasonably chargeable to operating expenses or income,

*It is hereby ordered* that Pacific Gas and Electric Company be authorized and it is hereby authorized to expend moneys from the proceeds of the sale of \$5,000,000 of its general and refunding mortgage five per cent gold bonds, due January 1, 1942, as approved by this Commission in its order of September 14, 1912, for the purpose of enlarging twenty-two miles of said Bear River Canal from its present capacity of fifty cubic feet per second to a capacity of three hundred and fifty cubic feet per second, at a cost not to exceed \$590,000, upon the following conditions, and not otherwise:

The conditions laid down in the Commission's order of September 14, 1912, authorizing the sale by Pacific Gas and Electric Company of \$5,000,000 of its first and refunding five per cent gold bonds, due January 1, 1942, are hereby made conditions of the order herein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of April, 1913.

Decisions Nos. 553, 554 and 555, grade crossings; not printed. See end of volume.

DECISION No. 556.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED TO IT BY ORDINANCES NO. 286 AND NO. 287 OF THE CITY OF RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 475.

*Decided April 7, 1913.*

REPORT OF THE COMMISSION.

San Francisco-Oakland Terminal Railways Company, having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the city of Richmond in its ordinances No. 286 and No. 287, both adopted on January 21, 1913, by which ordinances applicant is given the right to lay down, construct, maintain and operate a single or double track street railroad, along and upon certain specified streets in the city of Richmond, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by San Francisco-Oakland Terminal Railways of the rights and privileges granted to said company by the city of Richmond in its ordinances No. 286 and No. 287.

By order of the Railroad Commission.

Dated at San Francisco, California, this 7th day of April, 1913.

DECISION No. 557.

IN THE MATTER OF THE APPLICATION OF THE CALIFORNIA TELEPHONE AND LIGHT COMPANY TO CONTINUE SPECIFIED DEVIATIONS FROM SCHEDULED RATES.

Application No. 44.

*Decided April 7, 1913.*

REPORT OF THE COMMISSION.

California Telephone and Light Company having on April 2, 1913, made request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 7th day of April, 1913.

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DECISION No. 558.

IN THE MATTER OF THE APPLICATION OF H. I. MAXIM  
FOR A CERTIFICATE DECLARING THAT PUBLIC CON-  
VENIENCE AND NECESSITY REQUIRE THE EXERCISE  
OF RIGHTS AND PRIVILEGES CONTAINED IN A  
FRANCHISE APPLIED FOR BUT NOT YET ISSUED BY  
THE CITY OF MADERA.

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Application No. 90.

*Decided April 7, 1913.*

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REPORT OF THE COMMISSION.

H. I. Maxim having on March 31, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 7th day of April, 1913.

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DECISION No. 559.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELEC-  
TRIC RAILWAY COMPANY FOR AUTHORITY TO ISSUE  
REFUNDING MORTGAGE FIFTY-YEAR GOLD BONDS IN  
THE FACE VALUE OF SEVEN MILLION THIRTY-FOUR  
THOUSAND DOLLARS.

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Application No. 349.

*Decided April 8, 1913.*

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The Pacific Electric Railway Company applied for permission to issue \$6,839,000 five per cent bonds and to use the proceeds for extensions and betterments. The Southern Pacific Company owns all of the outstanding capital stock of applicant and it was suggested that said company may purchase the bonds hereby authorized.

*Held*, The owner of a utility should not be allowed to profit by taking its bonds at the minimum fixed by the Commission and resell them at an advance and pocket the difference. However, this situation can be safeguarded by the provision in the order to the effect that if these bonds are purchased by the Southern Pacific Company and resold at an advance within a year, any advance in price obtained by said company shall be turned over to applicant. Application granted.

*J. W. M. Kinley and Frank Karr, for Applicant.*

#### REPORT OF THE COMMISSION.

*EDGERTON, Commissioner.*

This is an application by Pacific Electric Railway Company for an order authorizing the issue by applicant of \$7,034,000 face value of its refunding mortgage fifty-year gold bonds under a mortgage dated September 1, 1911. At the hearing the application was amended to a request for a total of \$6,839,000 of bonds, instead of the amount first asked for.

The financial condition of applicant is as follows:

|   |                  |
|---|------------------|
| Bonds—Authorized .....                                    | \$100,000,000 00 |
| Issued .....  | 20,839,000 00    |
| Underlying bonds .....                                    | 31,740,000 00    |
| Other indebtedness of applicant as of November 30, 1912-- | 370,730 81       |
| Miscellaneous indebtedness .....                          | 1,366,939 85     |
| Stock—Authorized .....                                    | 100,000,000 00   |
| Issued .....  | 74,000,000 00    |

Applicant had for the fiscal year ending June 30, 1912, a gross income of \$8,864,872.92, and after paying operating expenses, fixed charges, sinking fund requirements and all other expenses, a net surplus earning of \$477,816.30, and for five months of the fiscal year ending November 30, 1912, a gross income from all sources of \$4,195,229.75 and a total expenditure for said period of \$3,894,205.90, leaving a surplus after paying all operating expenses, fixed charges and other items, of \$301,023.85.

The additional interest to be borne by applicant upon the bonds to be issued under this obligation will amount to \$341,950 per annum, but it is clear that with a surplus of earnings for five months as above noted, there can be no question of applicant's ability to meet this additional fixed charge.

The Pacific Electric Railway Company was formed about September 1, 1911, by the consolidation of the Pacific Electric Railway Company, the Los Angeles Interurban Railway Company, the Los Angeles and Redondo Railway Company, the Riverside and Arlington Railway Company, the San Bernardino Valley Traction Company, the Redlands Central Railway Company, the San Bernardino Interurban Railway Company and the Los Angeles Pacific Company, all of which prior to said consolidation were separately organized corporations.

The aggregate face amount of bonds permitted to be issued under the terms of the trust deed, before mentioned, is \$100,000,000. Of this amount \$39,693,000 is set aside for the purpose of refunding under-

lying bonds. Ten million dollars was turned over immediately to applicant, and the testimony is that the proceeds derived from the sale thereof were used in extending the property and making improvements. Fifty million three hundred and seven thousand dollars were set aside for the purpose of extending and improving the road of applicant after September 1, 1911.

This trust deed provides that for these last mentioned bonds the full face value thereof must be produced in money or property. The result of this provision is that if applicant sells these bonds below face value it must make up any discount out of its earnings or from other sources.

It has been impossible to determine the physical value or cost of the various railroad properties at the time they were consolidated.

No complete detailed inventory and appraisal of the properties of applicant has been made, but there is submitted a valuation made by the employees of applicant and testified to as being correct, a statement of the physical value of applicant's plant, totaling \$75,820,960. Included in this valuation is an item of \$5,452,000, representing lands belonging to land companies, and it is not made clear that the capital stock of these land companies has been placed under the lien of the bonds proposed to be issued. The order herein should be made conditioned upon this being done.

The total outstanding indebtedness of applicant is \$54,316,670.66, and while I cannot find that the valuation placed by applicant upon its physical values is accurate, still there is sufficient evidence that there exists a reasonable margin between the total outstanding indebtedness, including the amount of bonds herein asked to be authorized, to wit, \$61,155,670.66, and the physical value of applicant's property to warrant the granting of this application.

Furthermore, the purposes for which the money to be derived from the sale of the bonds asked to be authorized are to be used are such as will provide extensions and betterments and increase the capacity of applicant to handle business, and also open up new territory, thus furnishing applicant with additional traffic. Applicant is operating in a rapidly developing part of California, and viewing the rapid increase in income, shown in this proceeding, together with the known increase in population in the district through which it operates, it seems certain that the future of this railroad system under any reasonably competent management is assured.

The purposes for which the money to be derived from the sale of bonds are to be used are extensions, additions and improvements, all properly capitalizable and all fully set out in the application and exhibits attached thereto. The details of the various items submitted have been checked by the engineers of the Commission and found to

represent construction, acquisition and additions to property properly designed and purposed for the efficient enlarging of this system, and the valuations attached to the various items have been found by engineers to be approximately correct.

The Southern Pacific Company owns all of the outstanding capital stock of applicant and it has been suggested that the Southern Pacific Company may purchase the bonds hereby authorized. The owner of a utility should not be allowed to profit by taking its bonds at the minimum fixed by this Commission and reselling them at an advance and pocketing the difference.

But the Southern Pacific Company should not be precluded from buying the bonds of a company which it owns or controls because it may be the only or the best customer. However, this situation can be safeguarded by a provision in the order to the effect that if these bonds are purchased by the Southern Pacific Company and resold at an advance within a year, any advance in price obtained by said Southern Pacific Company shall be turned over to applicant.

I recommend that the application be granted, and submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by the Pacific Electric Railway Company for an order authorizing the issue by said company of its refunding mortgage fifty-year gold bonds dated September 1, 1911, bearing interest at the rate of five per cent per annum,

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the discharge of its obligations properly chargeable to capital, and the improvement, additions to and betterments of its plant and railway system, and that the purposes for which the proceeds of the sale of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Pacific Electric Railway Company of \$6,839,000 face value of refunding mortgage fifty-year gold bonds bearing interest at the rate of 5 per cent per annum, dated September 1, 1911, or so much thereof as may be necessary for the purposes set out herein.

Said bonds to be issued under and in pursuance of the terms of a mortgage dated September 1, 1911, executed by Pacific Electric Railway Company to United States Mortgage and Trust Company, a copy of which said mortgage is on file with the application herein, upon the following conditions and not otherwise:

1. Pacific Electric Railway Company shall sell the bonds herein authorized so as to net said company not less than  $87\frac{1}{2}$  per cent of the face value thereof, plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said bonds shall be used for the following purposes only:

(a) For the payment of work now under way or finished, as shown in detail in Exhibit A, attached to the application herein, said exhibit having been in some respects amended at the hearing, the specifications of such amendment being filed herein and marked Supplement to Exhibits A and B, said purposes being summarized as follows:

|  |                |
|--|----------------|
| Extensions and branches, items 1-33, Exhibit A.....      | \$3,046,598 96 |
| Addition main tracks, items 34-36, Exhibit A.....        | 12,536 92      |
| Tunnels, bridges, etc., items 37-122, Exhibit A.....     | 269,870 72     |
| Additional real estate, items 123-132, Exhibit A.....    | 21,663 50      |
| Stations, shops, etc., items 133-229, Exhibit A.....     | 146,060 33     |
| Light and power plants, items 230-263, Exhibit A.....    | 123,827 04     |
| Water, water rights, etc., items 264-265, Exhibit A..... | 940 00         |
| Rolling stock, items 266-288, Exhibit A.....             | 1,457,139 05   |
| Additions and betterments, items 289-326, Exhibit A..... | 554,334 00     |

Total Exhibit A..... \$5,632,970 52

(b) For the purpose of paying for work and construction and acquisition of property which is proposed to be undertaken as shown in detail in Exhibit B attached to the application, said exhibit having been in some respects amended at the hearing, the specifications of such amendment being filed herein and marked Supplement to Exhibits A and B, said purposes being summarized as follows:

|   |              |
|---|--------------|
| Extensions and construction, items 1-10, Exhibit B..... | \$357,940 00 |
| Equipment, items 11-21, Exhibit B.....                  | 68,630 00    |
| Additions and betterments, items 22-86, Exhibit B.....  | 779,230 00   |

Total Exhibit B..... \$1,205,800 00

Grand Total, Exhibits A and B..... \$6,838,770 52

3. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys. Said report to be made in detail as to expenditures for each of the items numbered 1 to 326, set out in Exhibit A, and items 1 to 80 in Exhibit B.

4. As a condition precedent to the effectiveness of this order there shall be submitted to and approved by this Commission an instrument in writing placing the capital stock of the following companies, or so

much thereof as is owned by Pacific Electric Railway Company, under the lien of the mortgage dated September 1, 1911, and heretofore described.

Newport Beach Company.

Los Angeles Pacific Land Company.

Pacific Electric Land Company.

5. If any of the bonds hereby authorized be sold to the Southern Pacific Company by applicant, a contract of sale shall be executed to the effect that if the Southern Pacific Company sell such bonds within a year from the date of such sale, at an advance in price, the difference in the price paid to the price received by the Southern Pacific Company shall be turned over to the applicant.

6. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the 1st day of May, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of April, 1913.

DECISION No. 560.

IN THE MATTER OF A PHYSICAL CONNECTION BETWEEN  
THE PETALUMA AND SANTA ROSA RAILWAY COMPANY  
AND THE NORTHWESTERN PACIFIC RAILROAD COM-  
PANY EITHER AT PETALUMA, SEBASTOPOL OR SANTA  
ROSA, IN SONOMA COUNTY, CALIFORNIA.

(On the Commission's Own Initiative.)

Case No. 386.

*Decided April 9, 1913.*

REPORT OF THE COMMISSION.

*It is hereby ordered* that this Commission institute on its own initiative, under the provisions of section 60 of the Public Utilities Act, an investigation to determine whether public convenience and necessity will be subserved by having a track connection made, under the provisions of section 38 of the Public Utilities Act, between the tracks of the Petaluma and Santa Rosa Railway Company and the Northwestern Pacific Railroad Company within either the city of Petaluma, Sebastopol or Santa Rosa, Sonoma County, California.



*Be it further ordered* that the Secretary of this Commission be and he hereby is instructed to notify said Petaluma and Santa Rosa Railway Company and said Northwestern Pacific Railroad Company to appear before this Commission at its office, 833 Market street, San Francisco, California, on Monday, May 5, 1913, at ten a. m., at which time and place said Petaluma and Santa Rosa Railway Company and the Northwestern Pacific Railroad Company may appear and be heard upon the matters involved in this proceeding.

*Be it further ordered* that if either Petaluma and Santa Rosa Railway Company or the Northwestern Pacific Railroad Company do not appear at said time and place, said company failing to so appear shall be deemed guilty of contempt of this Commission and subject to the penalties prescribed by the Public Utilities Act.

By order of the Railroad Commission.

Dated at San Francisco, California, this 9th day of April, 1913.

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DECISION No. 561.

N. S. STOCKTON

vs.

CROCKER-HUFFMAN LAND AND WATER COMPANY.

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Case No. 384.

*Decided April 9, 1913.*

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REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled proceeding having on April 5, 1913, made written request to this Commission that the above entitled proceeding be dismissed,

*It is hereby ordered* that the complaint in the above entitled proceeding be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 9th day of April, 1913.

## DECISION No. 562.

GREAT WESTERN POWER COMPANY AND THE TOWN OF  
SUISUN CITY*vs.*PACIFIC GAS AND ELECTRIC COMPANY AND PACIFIC TELE-  
PHONE AND TELEGRAPH COMPANY.

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Case No. 351.

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Decided April 10, 1913.

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*Held*, On motion to dismiss the complaint on the ground that it is beyond the power of the Commission to compel the joint use of poles by competing electric companies within the city of Suisun, the motion was dismissed and a hearing ordered on the questions of fact involved.

*Guy C. Earl and Chaffee E. Hall*, for complainant, Great Western Power Company.

*Chaffee E. Hall and C. J. Goodell*, for complainant, Town of Suisun City.

*C. P. Cutten*, for defendant, Pacific Gas and Electric Company.

*Pillsbury, Madison & Sutro*, for defendant Pacific Telephone and Telegraph Company.

## REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

The above named complainants filed their complaint on the 30th day of December, 1912, praying that the defendants be required to afford to the Great Western Power Company the joint use of the poles used within the town of Suisun City jointly by the Pacific Gas and Electric Company and the Pacific Telephone and Telegraph Company, on the ground that public convenience and necessity would be served by such joint use. Thereafter the defendants objected to the sufficiency of the complaint on the ground that this Commission does not have authority to grant the relief prayed for.

A hearing was held and arguments adduced touching the legal questions involved. I do not feel, however, that it is necessary at the present time to express an opinion upon the constitutional questions raised by the parties. Section 41 of the Public Utilities Act provides:

“Whenever the Commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other

equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof."

From a consideration of this section it appears that there are certain questions of fact which must be determined after the submission of evidence which may be largely determinative of the legal questions involved. It must appear that the joint use "will not result in irreparable injury to the owner" of the facility, and of course the determination of this question will have to await the hearing of the case. Furthermore, in the face of a positive admonition of the statute empowering this Commission to take the action demanded in the complaint in a proper case, I do not feel that a tribunal such as this should, in the face of such provision of the statute, refuse to grant the relief, if otherwise found to be proper, on the ground that this provision is contrary to the constitution. Not intimating at all that I think the provision is inconsistent with either the State or Federal constitution, I think it is unnecessary to pass upon the question now. If, after a hearing, the Commission is of the opinion that on the facts disclosed at such hearing the complainants are entitled to the relief prayed for, I think the relief should be granted, and if the defendants are dissatisfied with such disposition of the case they can as well after such decision as now avail themselves of any legal defense they may have against the action of the Commission, and the courts, which are of course the proper tribunals for determining this question, can be called on for a decision.

The parties to this case do not raise any question as to a conflict of jurisdiction between the municipal corporation involved and the Commission. The complainants by bringing this action admit the jurisdiction of this Commission, and their attorneys, furthermore, take the position that the jurisdiction is not in the city but in the Commission. The attorneys for the defendants likewise admit the jurisdiction of this Commission to grant the relief prayed for if it exists anywhere. Such being the case it will not be necessary to discuss the question as to the power of the town of Suisun City in this regard, and the case may be decided on the theory that if jurisdiction exists anywhere it exists in this Commission.

I recommend that the protest be dismissed and defendants be required to answer, and it is so ordered.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of April, 1913.

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Decisions Nos. 563, 564 and 565, grade crossings; not printed. See end of volume.

DECISION No. 566.

IN THE MATTER OF THE APPLICATION OF JONATHAN GRANT KIRKMAN TO LEASE CENTRAL TELEPHONE AND TELEGRAPH COMPANY, AT EXETER, CALIFORNIA, TO JOHN ALLES.

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Application No. 447.

*Decided April 10, 1913.*

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It appearing at the hearing herein that, under the terms of the lease, the lessee, having limited means, would be unable to make extensions to the system should public necessity demand them, and applicant having stipulated to make all extensions considered necessary from time to time.

*Held*, Application should be granted, the lease to embody said stipulation and to contain the provision also that, in addition to the 15 per cent of toll charges, the lessee is to receive 5 cents on each incoming message, thus equaling the 30 per cent agreed upon between the Commission and The Pacific Telephone and Telegraph Company.

*Jonathan Grant Kirkman*, for Applicant.

*H. A. Johnson*, representing The Pacific Telephone and Telegraph Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an application of Jonathan Grant Kirkman, of Exeter, Tulare County, California, to lease a telephone plant now owned by him and conducted as a public utility in and about said town of Exeter, Tulare County, California, to John Alles.

A financial statement was filed by each of said parties and made a part of the application. The statement of Jonathan Grant Kirkman shows him to be a man of considerable means, his total assets being about \$45,000 and total indebtedness \$3,700. The statement of John Alles shows that his means are somewhat limited, his total assets being \$4,000, consisting of half interest in a nursery at Exeter, such half interest being valued at \$500, fifty acres of timber land valued at \$1,300, half interest in twenty-two acres of farm land, such half interest being valued at \$500, and house and lot in Exeter valued at \$1,700, mortgaged

for \$500. Mr. Alles was not present at the hearing; therefore, could not be questioned as to these values or the incumbrance on his property, but it will readily be seen that it will be difficult to realize upon assets of this character part of which are encumbered and subject to homestead.

The earnings of the telephone exchange which applicant desires to lease to said Alles, for the last fiscal year, were \$2,970, while the total expenses were \$930, thus indicating a net revenue of \$2,040. The lease is to run for five years at a monthly rental of \$110 per month. Under the lease, the lessee obligates himself to take care of all repairs and extensions and installation of plant and new phones, as required by public necessity.

It is apparent that, under the conditions of this lease, after paying expenses of \$930 and \$110 per month, or \$1,320 per year rental, but a small sum, namely, \$720 will remain to the lessee out of the total earnings of \$2,970, and that with his limited means it would clearly be impossible for him to make extensions, should the public necessity demand it, of which necessity there seems to be no doubt, as Exeter is a populous, growing community. This was developed at the hearing and applicant was informed that the Commission was not disposed to permit him to turn over his public utility without the Commission receiving assurance that the interests of the public would be served by the making of such extensions and improvements as were found necessary. Applicant, thereupon, stipulated that he would make all extensions and improvements considered necessary from time to time and that the Commission should be the judge of such necessity.

The lease also provided that the lessee was to receive 15 per cent of all tolls collected at or through this exchange over long distance lines belonging to The Pacific Telephone and Telegraph Company. The Commission objected to this provision in the lease as it had already considered the matter of what per cent of the toll charges small exchanges like this should receive and had arrived at an understanding with The Pacific Telephone and Telegraph Company that such per cent should be 30 per cent instead of 15 per cent.

Mr. H. A. Johnson, representing The Pacific Telephone and Telegraph Company, was in attendance at the hearing and testified that, as a result of negotiations and correspondence between the Commission and The Pacific Telephone and Telegraph Company, that company had agreed to increase the per cent of toll charges allowed to smaller companies throughout the State to 30 per cent, but that instead of figuring it at 30 per cent The Pacific Telephone and Telegraph Company preferred to allow the small exchanges the 15 per cent and give them an additional sum on incoming messages on which, in the past, small exchanges have received nothing. This plan, Mr. Johnson testified, resulted in

the equivalent of 30 per cent. The additional sum which it is proposed to give to the small exchanges is 5 cents on each incoming message and a statement covering the business done at the office of the telephone exchange comprehended in this application, filed with this Commission by The Pacific Telephone and Telegraph Company since the hearing of this application, and covering a period of six months, which statement Mr. Johnson, while testifying, agreed to file, shows that such additional sum of 5 cents on each incoming message, plus the 15 per cent which small exchanges now receive on toll charges, makes the full equivalent of 30 per cent, while this plan has the additional advantage of satisfying the small exchanges inasmuch as it gives them something on the incoming messages, whereas, to allow them straight 30 per cent, they still might have the idea that they were doing something for which they were getting nothing.

Upon the stipulation of applicant that he will, at once, upon request of this Commission, make such extensions and improvements as the Commission thinks necessary, I recommend the approval of a lease embodying said stipulation and containing the provision also that, in addition to the 15 per cent of toll charges, applicant is to receive 5 cents on each incoming message, thus equaling the 30 per cent agreed upon between the Commission and The Pacific Telephone and Telegraph Company.

I recommend the following order :

**ORDER.**

Application having been made by Jonathan Grant Kirkman to lease Central Telephone and Telegraph Company, at Exeter, California, to John Alles; and it appearing that while the proposed transaction involving a public utility devoted to telephone service in and about said town of Exeter, Tulare County, California, was not satisfactory to the Commission, inasmuch as it contemplated the lease of said public utility by a man possessed of ample means to make extensions and improvements, when necessary, to a man who might not be able to make such improvements and extensions, it being evident that the net returns from the Central Telephone and Telegraph Company would not enable him to make such improvements and extensions; and the lessor having stipulated with the Commission that he would, during the life of the lease, make all necessary extensions and improvements, allowing the Commission to be the judge of such necessity;

*It is hereby ordered* that said Jonathan Grant Kirkman, owner of the Central Telephone and Telegraph Company, of Exeter, Tulare County, California, be and he is hereby authorized to lease said Central Telephone and Telegraph Company, of Exeter, Tulare County, California, to John Alles, for a period of five years, from the first day of December, 1912, at a monthly rental of \$110 per month, said lease to contain

the provision that any allowance made by The Pacific Telephone and Telegraph Company, in addition to the 15 per cent of toll charges to said Central Telephone and Telegraph Company, of Exeter, shall be paid to and belong to said lessee, John Alles; and a further provision that said lessor, Jonathan Grant Kirkman, will make all necessary extensions and improvements at his own proper cost when the necessity for such improvements or extensions arises, and that the Railroad Commission of the State of California shall, if necessary, finally pass upon such necessity.

Under the conditions above set forth, *it is further ordered* that said John Alles be authorized to enter into said lease and to take over said telephone exchange.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of April, 1913.

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DECISION No. 567.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA WESTERN RAILROAD AND NAVIGATION COMPANY TO REFUND TO THE UNION LUMBER COMPANY AND THE IRVINE & MUIR LUMBER COMPANY CHARGES COLLECTED IN EXCESS OF THOSE AGREED TO BY CONTRACT.

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Application No. 373.

*Decided April 11, 1913.*

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In consideration for a grant of rights of way, the predecessor of applicant, the Union Lumber Company, contracted to transport stated quantities of forest products of the grantor, the Irvine & Muir Lumber Company, at \$1.75 per thousand feet B. M., and to furnish certain transportation facilities. Thereafter, on June 18, 1912, applicant filed its tariff schedule which provided a rate on said forest products of \$2.50 per thousand, and, having collected the higher rate from the grantor, seeks permission, under section 17-4(b) of the Public Utilities Act, to refund the difference and to transport the remainder of the amount covered by the contract at the lower rate; also for permission to make refund in an unspecified amount to the Union Lumber Company.

*Held.* That contracts between a utility and its patrons for a valuable consideration, entered into in good faith, should be approved by the Commission in so far as such approval will not result in discrimination, but approval of this contract, on the terms desired, would amount to a discrimination. This carrier has quite properly collected the tariff rate on a commodity involved since it became a common carrier, and it should be required to do so hereafter.

*Held*, A carrier should be permitted to pay an agreed price for rights of way which it has secured. The trouble with the present arrangement, however, is that it is difficult to determine the agreed price. A procedure suggested by which such difficulty might be overcome. Application denied.

C. W. Durbrow, for Applicant.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

The applicant herein is a common carrier and its stock is owned by the Union Lumber Company. A portion of the road of applicant was constructed by the Union Lumber Company as a logging road to be used in conjunction with its lumber business. Thereafter the applicant was incorporated as a common carrier and the stock reserved by the Union Lumber Company. Prior to such incorporation of the applicant, on the 17th day of March, 1903, the Union Lumber Company entered into an agreement with Irvine & Muir Lumber Company, by the terms of which agreement it was provided that said Irvine & Muir Lumber Company should grant to said Union Lumber Company rights of way over its land, and in consideration for said grant of rights of way the Union Lumber Company agreed to transport 37,500,000 feet of lumber from Irmulco to Fort Bragg at a rate of \$1.75 per thousand feet B. M. In addition thereto the Union Lumber Company was to transport 1,000 cords of tanbark at the same rate, to be estimated in thousand feet, and was to furnish wharfage and vessels at Fort Bragg for transportation of said forest products. The Irvine & Muir Lumber Company was to load all cars furnished it at its mills. Should the Union Lumber Company subsequent to said agreement extend its railroad to the town of Willits, or any point easterly of the lands of Irvine & Muir Lumber Company, it was agreed that it would transport forest products for said Irvine & Muir Lumber Company from its mills to the town of Willits and intermediate points at rates not exceeding the most favorable rates granted to any other shipper or shippers over any part of said railroad.

Thereafter, on the 30th day of March, 1907, after the incorporation of the applicant, a tripartite agreement was entered into between the applicant and Union Lumber Company and Irvine & Muir Lumber Company, which as far as the matter before this Commission is concerned, is merely a ratification of the former agreement between the Union Lumber Company and Irvine & Muir Lumber Company.

On the 18th day of June, 1912, applicant filed with this Commission its local Freight Tariff No. 2-A, C. R. C. No. 3, effective June 20, 1912, which tariff provides for rates on forest products and lumber, between the points involved in the contracts heretofore referred to, higher than the contract rates of \$1.75 per thousand feet. A considerable portion of the specified amount of forest products covered by the contract had been moved before the applicant became a common carrier, but on all such



commodities transported subsequent to the effective date of the tariff mentioned applicant has collected the regular tariff rate of \$2.50 per thousand feet, and now seeks authority to refund the difference to the Irvine & Muir Lumber Company, and likewise to be permitted to transport the remainder of the amount covered by the contract at the lower rate. Applicant likewise asks to make certain refunds, without specifying the amount thereof, to the Union Lumber Company, but I find nothing in the evidence or the contracts which at all warrants such application. The entire amount of forest products involved are the property of Irvine & Muir Lumber Company, but even were this not so it could not be urged that there was any equity in a request of the Union Lumber Company to be given the advantage of a rate fixed by contract when the contract was with a common carrier entirely owned by said company.

Applicant bases its request on the provision of section 17-4 (b) of the Public Utilities Act, and particularly the proviso therein. Said subsection reads as follows:

"Except as in this section otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; *provided*, that the Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility."

It is not entirely clear to me just what the power of the Commission is under the proviso in this section, but it certainly does not empower the Commission to approve discriminations, and I am clearly of the opinion that to permit this carrier to charge one rate to the Irvine & Muir Lumber Company by reason of a contract entered into heretofore between said lumber company and this common carrier, and another rate to other shippers similarly situated, would be a discrimination.

It was suggested at the hearing that the applicant publish a rate of \$1.75 instead of its present rate of \$2.50, and throw this rate open to all shippers. This the applicant is unwilling to do, and not having gone into the reasonableness of the charge, inasmuch as the same was not in issue in this case, we cannot at this time require that this be done.

As we said in the Cuyamaca water case, Decision No. 536, we believe

that contracts between a utility and its patrons for a valuable consideration, entered into in good faith, should be approved by this Commission in so far as such approval will not result in discrimination, but as I have already said, an approval of this contract on the terms desired would certainly amount to a discrimination. This carrier has quite properly collected the tariff rate on the commodity involved since it became a common carrier, and it should be required to do so hereafter.

I have no doubt of the bona fides of the transactions and contracts between the applicant and the Irvine & Muir Lumber Company, and it clearly appears that the latter company gave valuable rights of way and other privileges to the applicant and its predecessor, in return for this special rate, and if a way can be found whereby the intent of the parties to these contracts can be effectuated without working a discrimination, it is my belief that this Commission should approve the same.

Our attention is called to the case of *Weleetka Light and Water Company vs. Fort Smith and Western Railroad Company*, 12 I. C. Rep. 503. In that case Commissioner Harlan, speaking for the Commission, in referring to an arrangement similar to the one here involved, says:

"In this connection it is proper to add that the Commission does not approve the practice of some carriers of repaying advancements made by a shipper for the construction of a switch track by making an allowance to him of a definite amount on each carload of freight shipped to or from his manufacturing plant. Such an arrangement presents too much the appearance of a purchase of property by the carrier with transportation, which is contrary to the principles of the act. Undertakings of this nature ought to be evidenced by a written contract, a copy of which ought to be filed with the Commission. Although payments to be made by the carrier to the shipper under such contracts may properly be determined or based on the number of carload shipments made to or from the industry, such payments ought not to be made out of the rate as each car is moved, but ought to be made out of available funds at the end of definite intervals, say of six months or a year. When the entire cost has thus been refunded, a responsible officer of the company ought to file with the Commission a verified statement of the details of the entire transaction."

It can not be doubted that a carrier should be permitted to pay an agreed price for rights of way which it has secured. The trouble with the present arrangement, however, is that it is difficult to determine the agreed price. If the entire amount of forest products covered by the agreement moves, and the rate of \$2.50 per thousand feet now in the applicant's tariff is a reasonable rate, and there were no other covenants in the contract, it would be easy to determine that the amount agreed to be paid for the right of way was the difference between such reasonable rate of \$2.50 per thousand feet and \$1.75 per thousand feet multiplied

by the number of thousand feet moving. We have a right to assume, however, that the \$2.50 per thousand feet is a reasonable rate, and if the officers of these companies are willing to file a verified statement with this Commission to the effect that under all the circumstances under which these contracts were executed the privileges granted by the Irvine & Muir Lumber Company to the California Western Railroad and Navigation Company and the Union Lumber Company, as its predecessor, are reasonably worth the aggregate amount by which the freight rate at \$2.50 per thousand feet on the entire amount of commodity involved exceeds the amount which would be paid at the \$1.75 per thousand feet rate, or any less amount, specifying such amount, then I think the Commission should interpose no objection to the payment by the applicant to the Irvine & Muir Lumber Company of the amount so found less the amount which had already been in effect rebated before this applicant became a common carrier, and I recommend that such a procedure be approved. As far as the present application is concerned, however, it certainly should be dismissed, and whatever payment is made considered as independent of the rates but as a reasonable amount to be paid for what the applicant has received from Irvine & Muir Lumber Company.

I recommend the following form of order:

**ORDER.**

California Western Railroad and Navigation Company having heretofore filed its application with this Commission, asking to be permitted to charge the Irvine & Muir Lumber Company a rate of \$1.75 per thousand feet on forest products between Irmulco and Fort Bragg, as provided in a certain contract referred to in the opinion, instead of the rate of \$2.50 per thousand feet between the same points, as set out in its Local Freight Tariff No. 2-A, C. R. C. No. 3, effective June 20, 1912; and a hearing having been held and being apprised in the premises,

*It is hereby ordered* that the said application be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of April, 1913.

## DECISION No. 568.

IN THE MATTER OF THE APPLICATION OF VALLEY GAS AND FUEL COMPANY AND CALIFORNIA COKE AND GAS COMPANY FOR AN ORDER AUTHORIZING THE TRANSFER AND SALE TO LOS ANGELES GAS AND ELECTRIC CORPORATION OF THEIR GAS PLANT, DISTRIBUTING SYSTEM AND FRANCHISES, AND THE APPLICATION OF LOS ANGELES GAS AND ELECTRIC CORPORATION TO PURCHASE SAID PROPERTY.

Application No. 452.

*Decided April 10, 1913.*

The properties of the vendor companies are operated in competition with the purchasing company. Application is made for approval of their sale at \$175,000, the properties being valued by the purchasing company at \$189,309.67 and for approval of payment of part of the consideration by the issue of bonds of the purchasing company to the amount of 75 per cent of the purchase price, to wit, \$131,250.00. It appeared that the property to be acquired will be discarded from use to the extent of about one half its present value,

*Held*, In view of the natural tendency of courts to award a rate at least high enough to pay interest on the outstanding bonded indebtedness, it becomes very important that due consideration be given to the item of bonded indebtedness (*Smyth vs. Ames*, 169 U. S. 466). If a utility desires to buy out its competitor, it cannot expect that the public authorities will permit it to take on additional bonded indebtedness to cover that portion of the property which it will scrap or junk after its acquisition. A utility has no right to expect the public authorities to authorize the capitalization of junk. If a public utility, in order to rid itself of a competitor, desires to purchase its entire property, including that portion which will be scrapped, it must expect to pay for the scrap out of its reserve or in some other way which will not be charged up against the public. ✓

*Held*, That the purchase and sale of the property be authorized for the sum of \$175,000, and that the purchasing company be authorized to issue bonds against this property in the face value of \$87,500, and that the remaining portion of the purchase price be taken out of surplus accrued to date. It would not be fair to provide that the moneys which are not to be secured from the sale of bonds should be taken out of future earnings, because if that were done, the public would pay for the duplicated property after all, as it would be compelled to pay higher rates in order to meet these obligations. If the property which is not to be used in connection with the supply of gas in the territory here affected is hereafter sold or applied to a beneficial use in the purchaser's plant, the sale price or the value thereof may again be credited to surplus.

*Porter & Sutton*, for Valley Gas and Fuel Company and California Coke and Gas Company.

*Paul Overton*, for Los Angeles Gas and Electric Corporation.

## REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application on the part of Valley Gas and Fuel Company and California Coke and Gas Company to sell their gas plant, distribut-

ing system and franchises to Los Angeles Gas and Electric Corporation for the sum of \$175,000, and of the Los Angeles Gas and Electric Corporation to purchase said property. The property to be sold by the California Coke and Gas Company consists of a parcel of real estate in the city of Alhambra, and the gas manufacturing and generating plant located thereon, from which plant gas has been distributed by the Valley Gas and Fuel Company. The property to be sold by the Valley Gas and Fuel Company consists of its entire distributing system and its franchises. The California Coke and Gas Company is the holding company of the Valley Gas and Fuel Company and owns 4,995 of its 5,000 issued shares of capital stock. Neither the Valley Gas and Fuel Company nor the California Coke and Gas Company are selling any of the so-called Lowe patents owned by them.

The Valley Gas and Fuel Company was incorporated in 1901, and started operations in the city of Pasadena and South Pasadena in about January, 1902. At that time the company leased a small gas manufacturing plant near Arroyo Seco and secured its gas from this source. In 1906, the California Coke and Gas Company constructed a plant in Alhambra, from which plant the Valley Gas and Fuel Company has thereafter secured its gas. The Valley Gas and Fuel Company was the pioneer in Alhambra and in South Pasadena, but the city of Pasadena was being partially served by the Pasadena Consolidated Gas Company at the time the Valley Gas and Fuel Company entered that field. At the time the latter company started operations, it charged the sum of \$1.25 per thousand cubic feet of gas. Since that time, gradual reductions have been made, due in part, at least, to the competition of the Los Angeles Gas and Electric Corporation, with the result that the rate at present charged for gas in the entire territory served by the Valley Gas and Fuel Company, including Pasadena, South Pasadena, Alhambra and certain outlying territory is 75 cents per thousand cubic feet of gas. Mr. Thaddeus Lowe, the president of the Valley Gas and Fuel Company, and also of the California Coke and Gas Company, testified that the distributing system of the Valley Gas and Fuel Company had cost \$171,965.34; that the generating and manufacturing plant had cost \$70,000 and that the real estate on which the plant was located had cost \$2,500, and was now worth about \$7,000.

Mr. Luckenbach, the Los Angeles Gas and Electric Corporation's construction engineer, made a detailed estimate of the value of the properties to be acquired from the Valley Gas and Fuel Company and the California Coke and Gas Company. His conclusion was that the total value of these properties in their present condition is \$189,309.67, of which amount the real estate in Alhambra is estimated to be worth \$3,500, the distributing system \$129,444.67, and the remainder is to represent the manufacturing and generating plant in Alhambra, and

an item of \$1,600 for miscellaneous personal property. I am convinced that the sum of \$175,000 is not an excessive amount to pay for the property in its present condition.

Mr. Lowe testified that the Valley Gas and Fuel Company has been losing money at the rate of some \$8,000 or \$9,000 per year, and that it has become impossible longer to meet the competition of its more powerful rival. A comparison of the gross receipts of his company and of his rival for the year 1912 will show the relative strength of the two companies. For the year ending December 31, 1912, the Valley Gas and Fuel Company had total earnings amounting to \$50,374.96, with an alleged loss of \$13,914.04. The latter item, however, includes large items for loss by fire and for depreciated accounts, which are exceptional items and should not properly be charged in their entirety to this one year. For the same period, the total operating revenue of the Los Angeles Gas and Electric Corporation was \$4,284,809.44, and the balance carried forward for the year to the credit of profit and loss was \$1,446,558.64. From this amount, however, should be deducted the depreciation, estimated by the company's engineer at \$721,000, and dividends declared at the average rate of 7.2 per cent on all the common stock, amounting to \$687,000.

The importance of this application grows largely out of the fact that a considerable portion of the property which the Los Angeles Gas and Electric Corporation is to purchase has already been duplicated by that company, and will be scrapped or junked. The Los Angeles Gas and Electric Corporation has already duplicated most of the Valley Gas and Fuel Company's gas mains in the city of Pasadena. There is also some duplication in the remaining portions of the territory served by the Valley Gas and Fuel Company. It is the intention of the Los Angeles Gas and Electric Corporation to dismantle the gas manufacturing and generating plant at Alhambra, utilizing such portions thereof as are fit for further service. About one third of the Valley Gas and Fuel Company's mains are in territory in which no duplication has as yet taken place. The Los Angeles Gas and Electric Corporation expects to permit a portion of the Valley Gas and Fuel Company's mains now duplicated in the streets of Pasadena to remain in service, but it will be necessary to scrap about 25 per cent of the Valley Gas and Fuel Company's mains.

If the public utility desires to buy out a competitor and the public will not suffer from the transaction, this Commission, bearing in mind the greater economies which ought to result from the operations of a larger utility, will not be disposed to deny the right to consolidate, provided that the interests of the public are properly protected. If the consolidation is to be effected, however, it must be done in such a way that the burdens of the public will not be increased. In the present case, the Los Angeles Gas and Electric Corporation desires to pay \$175,000 for

property, a portion of which will be scrapped or junked, and to issue against this property bonds to the amount of 75 per cent of the purchase price, amounting to \$131,250. If these bonds are issued, the company will expect to earn rates sufficiently high to meet the added interest obligations which will result therefrom. At the hearing, counsel for the Los Angeles Gas and Electric Corporation suggested that the amount of bonded indebtedness would not make much difference as affecting the rates to be paid by the public, for the reason that the proper basis of valuation is the fair value of the property used and useful for the public purpose, and not the amount of bonds or stock outstanding. While there is much to be said in favor of this contention, it should be remembered in this connection that the Supreme Court of the United States, in the leading case of *Smyth vs. Ames*, 169 U. S. 466, held that all the elements of the problem should be taken into consideration, including the amount of bonds and capital stock outstanding. In view of this declaration and of the natural tendency of courts to award a rate at least high enough to pay interest on the outstanding bonded indebtedness, it becomes very important that due consideration be given to the item of bonded indebtedness.

If a utility desires to buy out its competitor, it can not expect that the public authorities will permit it to take on additional bonded indebtedness to cover that portion of the property which it will scrap or junk after its acquisition. A utility has no right to expect the public authorities to authorize the capitalization of junk. It may be reasonable to ask that bonded indebtedness be increased for the acquisition of that portion of the plant which will continue to be used or useful for the public service, but certainly not for that portion which is to be discarded. In the present case, the Valley Gas and Fuel Company has no bonds outstanding. If the process of competition were carried to its logical conclusion and the Valley Gas and Fuel Company were put entirely out of business, the public would not have to pay additional rates to cover a bonded indebtedness on this plant.

If a public utility, in order to rid itself of a competitor, desires to purchase its entire property, including that portion which will be scrapped, it must expect to pay for the scrap out of its reserve or in some other way which will not be charged up against the public.

In the present proceeding, the testimony shows that of the total of \$189,309.67, being the value of the property to be acquired, as estimated by the purchaser's construction engineer, the sum of \$58,265 represents the real estate in Alhambra and the gas manufacturing or generating plant thereon, which property is no longer to be used in the gas business. The testimony also shows that about 25 per cent of the Valley Gas and Fuel Company's gas mains will be scrapped. Twenty-five per cent of the sum of \$129,444.67, representing the estimated present value of

the Valley Gas and Fuel Company's distributing system, is \$32,361.17. It thus appears that property representing about one half of the value of the property to be acquired will be scrapped or no longer used in the gas business.

I accordingly recommend that the purchase and sale of the property be authorized for the sum of \$175,000, and that the Los Angeles Gas and Electric Corporation be authorized to issue bonds against this property in the face value of \$87,500, and that the remaining portion of the purchase price be taken out of surplus accrued to date. It would not be fair to provide that the moneys which are not to be secured from the sale of bonds should be taken out of future earnings, because if that were done, the public would pay for the duplicated property after all, as it would be compelled to pay higher rates in order to meet these obligations if the property which is not to be used in connection with the supply of gas in the territory here affected is hereafter sold or applied to a beneficial use in the purchaser's plant, the sale price or the value thereof may again be credited to surplus.

The city of Pasadena was represented at the hearing by its city attorney, who drew the attention of the commission to a condition existing in that portion of Pasadena which is known as Oak Knoll, where the gas service of the Valley Gas and Fuel Company has not been adequate to supply the needs of the inhabitants. The city attorney asked that the commission take some action in order to make sure that the residents of that section of the city would secure an adequate gas supply in case the contemplated purchase is consummated. The Los Angeles Gas and Electric Corporation gave assurance at the hearing that as soon as the order authorizing the purchase were made, it would immediately take steps to see to it that the inhabitants of Oak Knoll received adequate and sufficient service. This assurance may be deemed sufficient for the present. In case the plans of the Los Angeles Gas and Electric Corporation in this connection, as they will be presented to the city authorities at Pasadena, be not satisfactory to them, this Commission will be glad to go into this question further upon having its attention drawn to it.

I submit herewith the following form of order:

**ORDER.**

Valley Gas and Fuel Company and California Coke and Gas Company having applied to this Commission for an order authorizing the sale to Los Angeles Gas and Electric Corporation for the sum of one hundred and seventy-five thousand (\$175,000) dollars of the real property and gas manufacturing and generating plant located thereon, situated in the city of Alhambra and belonging to California Coke and Gas Company, and of the entire distributing system and franchises of



the Valley Gas and Fuel Company, as appears in contract between Los Angeles Gas and Electric Corporation and Valley Gas and Fuel Company and California Coke and Gas Company, dated February 21, 1913, a copy whereof is attached as "Exhibit D" to the petition in this case, and Los Angeles Gas and Electric Corporation having applied for an order authorizing the purchase by it of said property at said price, and a public hearing having been held on said application, and it appearing to the Commission that the application should be granted, subject to the conditions hereafter specified.

*It is hereby ordered* that said application be and the same is hereby granted, subject to the following express conditions:

1. The amount of one hundred and seventy-five thousand (\$175,000) dollars which Los Angeles Gas and Electric Corporation is authorized to pay for the property which it is to acquire from the Valley Gas and Fuel Company and the California Coke and Gas Company shall not be taken before this Commission or any other public authority to represent for rate fixing purposes the value of the property to be acquired.

2. In order to secure said purchase price of one hundred and seventy-five thousand (\$175,000) dollars, Los Angeles Gas and Electric Corporation may issue its bonds in the face value of eighty-seven thousand five hundred (\$87,500) dollars, as authorized by this Commission's order in Application No. 453, and the remaining portion of the purchase price shall be charged against surplus of said Los Angeles Gas and Electric Corporation.

3. Los Angeles Gas and Electric Corporation agrees that it will not use the purchase of the property of its competitor in the territory affected or the conditions arising out of the competition or resulting from the purchase of said property for the purpose of increasing gas rates in the territory affected. It is the intention of this Commission that gas rates in the territory affected shall not be increased above those now in effect.

4. The Los Angeles Gas and Electric Corporation shall take immediate steps to supply to the inhabitants of Oak Knoll an adequate and sufficient gas supply.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of April, 1913.

## DECISION No. 569.

## IN THE MATTER OF THE APPLICATION OF LOS ANGELES GAS AND ELECTRIC CORPORATION FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF BONDS, IN THE FACE VALUE OF NINE HUNDRED THOUSAND DOLLARS.

Application No. 453.

*Decided April 10, 1913.*

Applicant granted permission to issue, on or before April 1, 1914, first mortgage 5 per cent bonds in the face amount of \$900,000, to sell the first \$250,000 thereof at 94½ per cent and the remainder at 94½ per cent with accrued interest in each case, and to apply the proceeds to the following purposes: (a) for the purchase of the gas plant of California Coke and Gas Company and the gas distributing system of Valley Gas and Fuel Company (see Application No. 452), bonds not exceeding the face value of \$87,500; (b) for the reimbursement of moneys expended from income during the last year for the acquisition of property, etc., bonds not exceeding the face value of \$396,000; (c) for new construction, extensions and betterments, bonds not exceeding the face value of \$416,500.

*Paul Overton*, for Applicant.

## REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application on the part of the Los Angeles Gas and Electric Corporation for authority to issue its first and refunding mortgage 5 per cent thirty-year gold bonds, in the face value of \$900,000. The proceeds of these bonds are to be used partly to purchase the properties of the Valley Gas and Fuel Company and California Coke and Gas Company, as will appear in greater detail in this Commission's opinion and order in Application No. 452, partly to reimburse applicant for moneys which it has expended from income within the last year for new construction and extensions, and partly to secure funds with which to make additional construction and extensions during the next year or so, as will appear in greater detail hereafter.

Los Angeles Gas and Electric Corporation was organized in the year 1909 for the purpose of purchasing and acquiring all the properties of the Los Angeles Gas and Electric Company and the Pasadena Consolidated Gas Company. These properties were acquired by deeds executed and delivered on August 1, 1909. In payment for the properties of the Los Angeles Gas and Electric Company and of the Pasadena Consolidated Gas Company, applicant issued and delivered its capital stock to the amount of \$7,250,000, par value, and assumed bonded and floating indebtedness upon the properties acquired to the amount of \$4,320,801.06. From August 1, 1909, to January 1, 1913, applicant has made extensive additions to and extensions of its plants, properties

and equipment in an amount alleged by applicant to be the sum of \$4,806,969.41. Applicant claims that the original cost of its plants and properties as of January 1, 1913, is the sum of \$16,377,770.47.

Applicant has outstanding common stock of the par value of \$10,000,000 and bonds secured by mortgages on its property amounting to \$8,600,000. It is apparent that there is a considerable margin between the value of the property and the amount of bonds outstanding.

Applicant's statement of earnings for the year 1912 is as follows:

|   |                |
|---|----------------|
| Operating revenue .....   | \$4,284,809 44 |
| Operating expenses .....  | 2,472,683 97   |
| Net operating revenue .....                                     | \$1,812,125 47 |
| Interest and dividend revenue.....                              | \$21,320 68    |
| Sinking and other reserve fund accretions.....                  | 11,181 25      |
| Total non-operating revenue.....                                | 32,501 93      |
| Gross corporate income.....                                     | \$1,844,627 40 |
| Interest accrued on funded debt.....                            | \$396,405 57   |
| Other interest .....  | 1,663 19       |
| Total deductions from gross income.....                         | 398,068 76     |
| Net corporate income.....                                       | \$1,446,558 64 |
| Balance for year carried forward to credit of profit and loss.. | 1,446,558 64   |

From the balance of \$1,446,558.64 carried forward to the credit of profit and loss should be subtracted the sum of \$687,000 which was paid out as dividends on its issued capital stock during the year 1912 at an average rate of 7.2 per cent, and also the depreciation which applicant's engineer estimates at \$721,000, being at the rate of about  $4\frac{1}{2}$  per cent.

Applicant serves electric energy in the city of Los Angeles and in a small amount of unincorporated territory immediately contiguous thereto, at rates for lighting varying from  $6\frac{1}{2}$  cents to 3 cents per kilowatt, depending upon the amount of electric energy used, and at rates for power varying from 6 cents to 1.2 cents per kilowatt. The corporation supplies gas in Los Angeles, Pasadena, Huntington Park, Eagle Rock, South Pasadena, Watts, and adjoining territory, at a uniform rate of 75 cents per thousand cubic feet.

I shall now consider the three purposes for which applicant desires to issue bonds:

1. The purchase of the property of the Valley Gas and Fuel Company and the California Coke and Gas Company.

This matter has already been fully disposed of in this Commission's opinion and order in Application No. 452, to which opinion reference is hereby made. I shall recommend an authorization to issue first and refunding mortgage 5 per cent thirty-year gold bonds in the amount of \$87,500 for this purpose:

2. Reimbursement for moneys hitherto expended.

During the period from July 1, 1912, to December 31, 1912, appli-

cant alleges that it expended the sum of \$528,133.92 for permanent extensions and additions not heretofore used as a basis for the issuance of bonds. The individual items appear in Exhibit "D-3" attached to the application, and have been checked over by this Commission's experts and found to be substantially correct.

The items are as follows:

|                            |                        |
|----------------------------|------------------------|
| Conduit system -----       | \$34,633 05            |
| Electric appliances -----  | 5,621 22 <sup>1</sup>  |
| Electric arc lamps -----   | 93 00 <sup>1</sup>     |
| Electric meters -----      | 18,707 54              |
| Electric services -----    | 22,405 79              |
| Electric substations ----- | 2,278 99               |
| Electric works -----       | 99,555 55              |
| Garage -----               | 828 52                 |
| Gas arc lamps -----        | 4,143 68 <sup>1</sup>  |
| Gas meters -----           | 47,885 73              |
| Gas services -----         | 44,726 39              |
| Gas works -----            | 107,411 98             |
| Office building -----      | 1,200 00 <sup>1</sup>  |
| Poles and wire -----       | 31,527 97              |
| Real estate -----          | 28,054 67 <sup>2</sup> |
| Regulators -----           | 2,862 63               |
| Street mains -----         | 90,279 47              |
| Transformers -----         | 5,033 54               |
|                            | <hr/>                  |
|                            | \$528,133 92           |

Section 4 of article I of trust indenture from Los Angeles Gas and Electric Corporation to Union Trust Company of San Francisco and Harris Trust and Savings Bank of Chicago, trustees, to secure an authorized issue of \$15,000,000 of first and refunding mortgage 5 per cent thirty-year gold bonds, dated September 1, 1909, under which indenture applicant desires to issue the bonds for which application is now made, provides in section 4 of article I thereof, that the bonds remaining uncertified under the provisions of prior sections of said article "shall from time to time be certified and delivered by the trustees, as aforesaid, to an amount or amounts in par value not exceeding in the aggregate 75 per cent of the actual and reasonable cash expenditures made by the company for permanent extensions and additions of and to its plants, properties and equipment after the first day of September, 1909." Then follow provisos to the effect that bonds may be issued only when net earnings for the twelve months ending sixty days previous shall have been  $1\frac{3}{4}$  times the interest on all bonds plus  $1\frac{3}{4}$  times the interest on the bonds which it is proposed to issue, and that no bonds may be issued for real estate which shall not have been specifically mortgaged to the trustees, or for expenditures made out of insurance moneys received, or for expenditures made out of the proceeds from the sale of any part of the mortgaged property, or for expenditures made from any depreciation fund, or for expenditures previously made the basis for the certification of

<sup>1</sup>Deductions.

<sup>2</sup>Including \$14,621.37 expended prior to July 1, 1912.

bonds thereunder. The trust indenture provides for a sinking fund in cash equal to 2 per cent of the par value of the bonds annually outstanding. In lieu of cash, the company may deliver its par value outstanding bonds secured by the trust indenture.

Under the provisions of said trust indenture, applicant now desires authority to issue bonds of a face value amounting to 75 per cent of said sum of \$528,133.92, amounting to \$396,000. It appears from applicant's vouchers that said sum of \$528,133.92 was expended from income. Applicant's accounts and vouchers and the purposes for which the expenditures were made also appear, as provided in section 52b of the Public Utilities Act. I recommend that this portion of the application be granted.

### 3. New construction and extensions.

Applicant also attaches to its application its Exhibit "D-1," being a detailed statement of proposed expenditures for the year 1913. A summary of this statement is as follows:

|  |                |
|--|----------------|
| Gas plants -----                         | \$97,405 00    |
| Electric plant -----                     | 71,936 00      |
| Gas distributing system -----            | 601,948 69     |
| Electrical distributing system -----     | 280,050 00     |
| Compressed air equipment at garage ----- | 305 00         |
|  | <hr/>          |
|  | \$1,051,644 69 |

As the issue of bonds of the face value of \$483,500 has already been authorized herein, and as there will be remaining from the issue as applied for only \$416,500, face value, of bonds, it is evident that it will be necessary for applicant hereafter to make arrangements to secure additional funds to make the extensions and improvements contemplated for the year 1913. The purposes specified in applicant's Exhibit "D-1" are in general proper purposes for capital expenditures, and I recommend that the remaining bonds under the proposed issue of \$900,000, being bonds of the face value of \$416,500, be authorized to issue and that the proceeds thereof be expended in so far as they will go on the plan for proposed expenditures for the year 1913.

Applicant heretofore, on the 3d day of November, 1909, entered into a contract with E. H. Rollins & Sons and the Harris Trust and Savings Bank for the sale of its bonds. This contract is attached to the application as Exhibit "G." Under this agreement, the first \$250,000, face value, of bonds to be sold under this authorization will be sold at 94 $\frac{1}{8}$  and the balance at 94 $\frac{5}{8}$ , together with accrued interest in each case.

I find that the purposes for which the proceeds of the bonds hereby authorized are to be expended are not in whole or in part reasonably chargeable to operating expenses or to income, and submit herewith the following form of order:

## ORDER.

Los Angeles Gas and Electric Corporation having applied to the Railroad Commission for the consent of the Commission to the issuance by said company of bonds to the amount of nine hundred thousand (\$900,000) dollars, face value, said bonds to be payable on the first day of September, 1939, and to bear interest at the rate of five (5%) per cent per annum, payable semiannually, and secured by a trust indenture or mortgage upon all the property of the company, and a public hearing having been held upon said application, and the Commission finding that the proceeds to be procured from the issue of said bonds are not in whole or in part reasonably chargeable to income or to operating expenses,

*It is hereby ordered* as follows:

1. Los Angeles Gas and Electric Corporation is hereby authorized to issue its bonds of the face value of nine hundred thousand (\$900,000) dollars, being bonds Nos. 8251 to 9150, both inclusive, maturing the first day of September, 1939, and to bear interest at the rate of five (5%) per cent per annum, payable semiannually, under and in pursuance of the terms of the trust indenture or mortgage heretofore and on the first day of September, 1909, made and executed by said Los Angeles Gas and Electric Corporation to Union Trust Company of San Francisco and Harris Trust and Savings Bank of Chicago, as trustees, under the following express conditions and not otherwise, to wit:

(1) Los Angeles Gas and Electric Corporation shall sell the bonds hereby authorized so as to net the said company not less than ninety-four and one eighth ( $94\frac{1}{8}\%$ ) per cent of the par value of the principal thereof, besides interest accrued thereon, on the first two hundred and fifty thousand (\$250,000) dollars, face value, of the bonds so issued, and not less than ninety-four and five eighths ( $94\frac{5}{8}\%$ ) per cent of the face value of the principal thereof, besides interest accrued thereon, on the remaining bonds hereby authorized to be issued.

(2) The proceeds from the sale of said bonds shall be applied to the following purposes only, that is to say:

(a) For the acquisition of the real property and gas manufacturing or generating plant located thereon, belonging to California Coke and Gas Company and of the gas distributing system of Valley Gas and Fuel Company, as appears in greater detail in this Commission's opinion in Application No. 452, the proceeds from the sale of bonds not exceeding the face value of eighty-seven thousand five hundred (\$87,500) dollars.

(b) For the reimbursement of moneys expended from income during the last year for the acquisition of property and the construction, completion, extension and improvement of its facilities, plant and distributing system, as specified in Exhibit "D-3" attached to the petition

in this proceeding, the proceeds from the sale of bonds not exceeding the face value of three hundred and ninety-six thousand (\$396,000) dollars.

(c) For the acquisition of property, the construction, completion, extension, and improvement of facilities and the improvement and maintenance of service for items specified in Exhibit "D-1" attached to the petition in this proceeding, the proceeds from bonds not exceeding the face value of four hundred and sixteen thousand five hundred (\$416,500) dollars.

(3) Los Angeles Gas and Electric Corporation shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, shall make verified reports to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefor and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

(4) The payment of the fee specified in section 57 of the Public Utilities Act shall be a condition precedent to the effectiveness of this order.

(5) The authority hereby given to issue bonds shall apply only to bonds issued by Los Angeles Gas and Electric Corporation on or before the first day of April, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of April, 1913.

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DECISION No. 570.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF THE RIGHTS AND PRIVILEGES GRANTED TO IT BY RESOLUTION NO. 465 OF THE CITY OF RICHMOND.

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Application No. 487.

*Decided April 11, 1913.*

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REPORT OF THE COMMISSION.

San Francisco-Oakland Terminal Railways having applied to this Commission for a certificate that public convenience and necessity

require the exercise of the rights and privileges granted to applicant by the city of Richmond, in its Resolution No. 465, passed on March 17, 1913, by which resolution applicant is given permission, upon certain conditions, to lay down and use a temporary railroad single track switch, with its necessary poles and wires, over, along and upon a portion of Eighth avenue, in said city of Richmond, and it appearing that the rights granted to applicant in this resolution are to be exercised in territory already served by applicant, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by San Francisco-Oakland Terminal Railways of the rights and privileges granted to said company by the city of Richmond, in its Resolution No. 465, passed on March 17, 1913.

By order of the Railroad Commission.

Dated at San Francisco, California, this 11th day of April, 1913.

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DECISION No. 571.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF THE RIGHTS AND PRIVILEGES GRANTED TO IT BY RESOLUTION NO. 5142 OF THE CITY OF OAKLAND.

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Application No. 491.

*Decided April 11, 1913.*

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REPORT OF THE COMMISSION.

San Francisco-Oakland Terminal Railways having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the city of Oakland, in its Resolution No. 5142, N. S., passed on April 3, 1913, by which resolution applicant is given permission, upon certain conditions, to construct, lay down and maintain a spur track over, along and upon a portion of Twenty-second street and certain private property in the city of Oakland, and it appearing that the rights granted to applicant in this resolution are to be exercised in territory already served by applicant, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by San Francisco-Oakland Terminal Railways of the rights



and privileges granted to said company by the city of Oakland, in its resolution No. 5142, N. S., passed April 3, 1913.

By order of the Railroad Commission.

Dated at San Francisco, California, this 11th day of April, 1913.

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DECISION No. 572.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR THE APPROVAL OF A LEASE OF RAILROAD EQUIPMENT FROM COMMERCIAL TRUST COMPANY TO SOUTHERN PACIFIC COMPANY AND AN AGREEMENT BETWEEN HARRY E. RIGHTER AND WM. L. FRY WITH THE COMMERCIAL TRUST COMPANY AND SOUTHERN PACIFIC COMPANY AND FOR AN ORDER AUTHORIZING THE ISSUE OF TRUST CERTIFICATES AS PROVIDED IN SAID LEASE AND AGREEMENT.

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Application No. 484.

*Decided April 11, 1913.*

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The Southern Pacific Company made application for approval of issue of 4½ per cent equipment trust certificates due serially in ten equal annual installments, in the face amount of \$10,120,000, to be used in the purchase of certain rolling stock of which it will be lessee at the total cost of \$11,429,010, the balance of the cost to be paid in cash installments as delivery is made.

*Held.* The Southern Pacific Company needs the equipment; it is to the interest of the public that it should have it; the price to be paid is not exorbitant and the added obligation will not be an undue burden upon the company. Application granted.

*Guy V. Shoup and Henley C. Booth, for Applicant.*

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This is an application by the Southern Pacific Company to enter into an agreement for the acquisition by lease of railroad equipment and to issue equipment trust certificates and to guarantee these certificates unconditionally as to principal and interest.

While this is in effect an encumbrance upon the property of the Southern Pacific Company for 90 per cent of the purchase price of the equipment involved, as will be pointed out hereafter, yet I do not consider it necessary for the purposes of this application to enter into a consideration of the Southern Pacific Company's financial condition other than to call attention to the fact that this company is operating at a substantial profit at what, under the law, we must assume to be

prima facie reasonable rates, and that it has been paying not only interest on all its outstanding obligations in full, but has also been paying dividends upon its stock, which for the fiscal year ending June 30, 1912, amounted to \$16,360,342.32, which was at the rate of six per cent upon \$272,672,405 par value of stock. In addition the company has been carrying over a substantial surplus. It may therefore be presumed from the outset without a detailed presentation, that the Southern Pacific Company is fully capable of meeting all obligations that could arise under the application herein, and that the same does not constitute an unreasonable addition to its outstanding obligations; particularly is this true, independent of any other fact, since under the application the applicant will secure \$11,429,010 worth of additional new equipment, and will only add to its outstanding obligations the sum of \$10,120,000, as will more fully appear hereafter.

The Southern Pacific Company states in its application that the equipment it now possesses is insufficient and inadequate for its purposes, and that it requires additional equipment to meet the increased demands of traffic. Mr. G. F. Richardson, superintendent of transportation for the Southern Pacific Company, testifying for the applicant, states that the equipment to be purchased under the application represents the usual additional equipment needed annually, and that the same is being purchased at a reasonable and fair value, and I see no reason for questioning such statement.

The following equipment and the price to be paid therefor is set out in the application:

|                                     |                 |
|-------------------------------------|-----------------|
| 3181 box cars -----                 | \$3,719,601 00  |
| 961 gondola cars -----              | 1,026,163 00    |
| 700 work cars -----                 | 814,078 00      |
| 850 stock cars -----                | 850,350 00      |
| 400 automobile cars -----           | 573,600 00      |
| 240 flat cars -----                 | 220,800 00      |
| 200 tank cars -----                 | 273,500 00      |
| 45 caboose cars -----               | 60,660 00       |
| 5 gasoline motors -----             | 106,665 00      |
| 84 electric passenger coaches ----- | 1,160,369 00    |
| 114 locomotives -----               | 2,548,174 00    |
| 25 tenders -----                    | 75,050 00       |
| Total -----                         | \$11,429,010 00 |

This equipment applicant desires to use upon the lines of railroad owned or operated by it as lessee, and it is also to be used upon the railway of

Houston and Texas Railroad Company,  
Galveston, Harrisburg and San Antonio Railway Company,  
Houston, East and West Texas Railway Company,  
Portland, Eugene and Eastern Railway Company,  
Houston and Texas Central Railway Company,  
Morgans, Louisiana and Texas Railroad and Steamship Company.

Peninsula Railway Company,  
Fresno Traction Company,  
San Jose Railroads,  
Stockton Electric Company.

While many of these roads, as well as much of the property of the Southern Pacific Company, upon which the lien is sought to be created, are outside the State of California, the applicant states that it desires the blanket authority so as to remove any doubt of the legality of any of the equipment trust certificates that may be issued.

The plan under which Southern Pacific Company is to lease this equipment and under which the equipment trust certificates are to be issued is covered by two agreements. These are the agreement between Harry E. Righter and William L. Fry, Commercial Trust Company of Philadelphia and Southern Pacific Company, and the lease from the Commercial Trust Company of Philadelphia to Southern Pacific Company. The agreement is of March 1, 1913, by and between Harry E. Righter and William L. Fry of Pennsylvania (vendors of the equipment and known in this agreement as the vendors), Commercial Trust Company of Philadelphia (the trustee herein and designated the trustee), and Southern Pacific Company (designated the company).

Under this agreement the vendors are to deliver the equipment above mentioned to the persons designated by the trustee, who will be the officers of the Southern Pacific Company. The title to the equipment is to be vested with the trustee. The trustee is then to execute a lease of the equipment to the Southern Pacific Company. Upon receipt of the equipment and the execution of the lease to the Southern Pacific Company, the trustee will turn over to the vendors Southern Pacific equipment trust certificates, Series A, not to exceed 90 per cent of the cost of the equipment. As an alternative these equipment trust certificates may be turned over by the trustee to parties named by the vendors upon deposit by such parties of the face value of such certificates. It is further provided in the agreement that the Southern Pacific Company may at stated times after March 1, 1918, purchase the equipment.

The lease is dated March 1, 1913, under the terms of which Commercial Trust Company of Philadelphia, the trustee, leases the equipment above noted to the Southern Pacific Company. The conditions of this lease may be summarized as follows:

(1) As the equipment is delivered by the trustee to the Southern Pacific Company the latter will pay in cash the difference between the cost price of such equipment and the face value of the equipment trust certificates issued against it. The lease is drawn so that this sum shall represent 10 per cent of the cost price, the balance of 90 per cent to be covered by the equipment trust certificates.

(2) The Southern Pacific Company shall pay the reasonable expenses of the trust.

(3) The Southern Pacific Company shall pay the taxes accruing on the property and any other taxes that may arise from the transaction.

(4) The principal of these trust certificates shall amount to \$10,120,000, and the principal shall fall due in ten equal installments each year for ten years, beginning March 1, 1914, and running to March 1, 1923. The Southern Pacific Company agrees to pay these annual installments as they fall due.

(5) The Southern Pacific Company agrees to pay the dividend or interest warrant on the equipment trust certificates at the rate of  $4\frac{1}{2}$  per cent per annum.

(6) The Southern Pacific Company guarantees the principal and interest of these equipment trust certificates unconditionally.

(7) The title to the equipment shall remain with the trustee until the Southern Pacific Company shall complete the payment of principal and interest.

(8) The Southern Pacific Company may purchase the equipment at stated times after March 1, 1918, by paying the face value of the outstanding equipment trust certificates with a premium of  $2\frac{1}{2}$  per cent plus the accrued interest and other accumulations.

(9) Upon default of principal or interest by the Southern Pacific Company all payments fall due, and upon such default the trustee may take possession of and sell the equipment for the benefit of the holders of the equipment trust certificates.

(10) Equipment may be sold by the Southern Pacific Company to outsiders upon deposit with the trustee of amount received and sufficient in addition to make up the full cost price.

(11) New equipment may be substituted if put under the equipment trust certificates.

(12) Each car leased under this agreement shall bear the sign "Southern Pacific Equipment Trust, Series A, Commercial Trust Company, trustee, owner."

(13) The Southern Pacific Company must keep equipment in repair and insured.

(14) Equipment may not be sublet without the consent of the trustee.

It is testified that this is the usual form by which railroads throughout the United States secure their equipment. The issue of equipment trust certificates is also in the usual form. The whole plan reduces itself to this:

Southern Pacific Company desires to purchase equipment which will cost \$11,429,010. Against this will be issued equipment trust certificates to the amount of \$10,120,000, leaving a balance to be paid in

cash of \$1,309,010. This cash will be paid from time to time as the equipment is turned over representing approximately 10 per cent of the cost price of such equipment as it is turned over. The equipment trust certificates run for ten years, and therefore all of the equipment will be paid for at the end of ten years. Such a system of paying for equipment seems advisable as equipment depreciates rapidly, and a long term bond might still be outstanding long after the equipment had been worn out completely and discarded.

The company has followed the usual practice in holding the title to the equipment in the name of the trustee while certificates are outstanding against it. The lease to the Southern Pacific Company is a mere formal matter made necessary by the fact that the Southern Pacific Company does not buy the equipment outright but must have the legal right to use the same.

As I see the whole matter it is practically as follows:

The Southern Pacific Company desires to secure a certain amount of equipment for which it does not desire to pay in cash but desires to extend the payments over ten years. Instead of issuing bonds, it issues trust certificates covering 90 per cent of the value of the equipment to be acquired, and pays the rest in cash as the equipment is delivered. As it was testified by Mr. Richardson that all of this equipment would be needed within the year, it may be assumed that the \$1,309,010 will be paid within the next year and the equipment secured, leaving the Southern Pacific Company in practical ownership of the equipment with a mortgage against the same amounting to 90 per cent of its value upon which the Southern Pacific Company is paying 4½ per cent. The Southern Pacific Company needs the equipment; it is to the interest of the public that it should have it. I am convinced from the evidence that the price paid is not exorbitant. I am clearly of the opinion that the added obligation is not an undue burden upon the applicant, and I recommend that the application be granted and the agreement and lease be approved.

I submit the following order:

#### ORDER.

Application having been made to this Commission by Southern Pacific Company for an order of this Commission authorizing it to enter into a contract with Commercial Trust Company of Philadelphia for the lease of railroad equipment under that certain indenture dated March 1, 1913, and filed with this Commission as part of Exhibit B; and for an order of this Commission authorizing said Southern Pacific Company to enter into an agreement with Harry E. Righter and William L. Fry and Commercial Trust Company of Philadelphia providing for an issue of equipment trust certificates of the face value of \$10,120,000 due serially in ten equal annual installments from March

1, 1914, to March 1, 1923, with dividend coupons payable at the rate of  $4\frac{1}{2}$  per cent per annum, said equipment trust certificates to be known as "Southern Pacific Equipment Trust Certificates, Series A," and to be issued under that certain indenture dated March 1, 1913, and filed with this Commission as part of Exhibit B; and for an order of this Commission authorizing said Southern Pacific Company to guarantee the payment of principal and dividend coupons of said equipment trust certificates;

And a hearing having been held and it appearing to this Commission that the equipment to be obtained by Southern Pacific Company under the terms of said lease and said agreement is reasonably required in the conduct of its business, and that said lease and said agreement are proper and reasonable in their provisions,

*It is hereby ordered* that Southern Pacific Company be authorized, and it is hereby authorized, to enter into said contract with Commercial Trust Company of Philadelphia for the lease of said equipment, and to enter into said agreement with Harry E. Righter and William L. Fry and Commercial Trust Company of Philadelphia for the issuance of said Southern Pacific equipment trust certificates, Series A, of the face value of \$10,120,000, and to guarantee the payment of principal and dividend coupons of said Southern Pacific equipment trust certificates.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of April, 1913.

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DECISION No. 573.

GOLDEN GATE BRICK COMPANY

*vs.*

WESTERN PACIFIC RAILWAY COMPANY.

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Case No. 362.

*Decided April 12, 1913.*

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Claim for reparation on the theory that a lower competitive rate should have been charged, denied upon application of defendant's tariff defining competitive traffic to the circumstances of the shipments in question.

*D. H. Walker, Jr.*, for Complainant.

*Allan P. Matthew*, for Defendant.

REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

Complainant applies for reparation on thirty-eight cars of sand moving between February 7, 1912, and November 25, 1912, between

Marysville, California, and Richmond, California. At the time these shipments moved Western Pacific Railway Company had in effect in its tariff No. 35-C, C. R. 64, Item 280, a specific charge of \$5.00 per car from sand pit to the transfer tracks of the Southern Pacific Company, which charge was assessed and collected on the thirty-eight cars involved. The carrier also had in effect in the tariff, Item 290, a rate of \$1.50 per car applying on competitive traffic only. The tariff referred to defines competitive traffic as follows:

“Competitive traffic is traffic moving from a point of origin to a point of destination, both of which are located on or reached by way of two or more rail, water or team carriers, or a combination of same.”

It is urged that because Richmond, the point of destination, is reached by the Southern Pacific Company, a line which with the Western Pacific Company serves Marysville, and also the Atchison, Topeka and Santa Fe, that the point, Richmond, is reached by two rail carriers, and so is a competitive point under the tariff and the rate of \$1.50 per car instead of \$5.00 should be assessed. The Western Pacific defends itself on the ground that no such construction of the tariff is reasonable, and calls attention to the fact that the reason for putting in the lower charge of \$1.50 per car on competitive traffic is that on such traffic this carrier receives not only the \$1.50, but a portion of the rate for the line haul over its competitor. For example, between the points involved the Western Pacific, if its provision on competitive traffic prevailed, would, on delivering each carload of sand to the Southern Pacific at Marysville for transportation to Richmond, have received from the Southern Pacific Company at least \$7.50, making an aggregate amount of \$9.00 on such traffic instead of \$5.00 which it receives for the switching service merely on non-competitive traffic. Both the Southern Pacific and the Western Pacific construe the tariff in such a way as to allow no division to the Western Pacific for traffic delivered by it to the Southern Pacific for transportation by the latter line to Richmond, and I believe such construction is reasonable. Thus, if the complainant is right in its contention, the Western Pacific when delivering a car of sand to the Southern Pacific for transportation to Richmond, where the Santa Fe competes with the Southern Pacific, would receive but \$1.50, while if it performed exactly the same service with reference to a car of sand destined say to Los Banos, which is a point solely upon the Southern Pacific and not touched by any other line, it would receive \$5.00 for such service. I do not believe that the fact that the Santa Fe competes with the Southern Pacific at Richmond makes traffic delivered to the Southern Pacific at Marysville by the Western Pacific destined to Richmond competitive traffic as far as the Western Pacific and Southern

Pacific are concerned, unless the Western Pacific has a joint rate and a through route by way of the Western Pacific and Santa Fe to Richmond carrying the same rate as prevails over the Southern Pacific on its single line haul between these two points, thereby making of the Santa Fe a connection of the Western Pacific and in effect a single competitive line for its traffic. The evidence shows that no such rate is in effect, and I am clearly of the opinion that under the facts of the case the complainant is not entitled to the relief asked.

I am not at all in sympathy with the practice of carriers in putting tortured construction upon a tariff provision so that the same may yield them more revenue, and I certainly am no more in sympathy with the same practice when indulged in by shippers with a view to securing less rates. Tariffs should be clear and unambiguous, and when there is an ambiguity by reason of which a shipper has suffered, the carrier being responsible for the ambiguity should certainly be required to sustain the loss, but where, as here, the shipper shows no loss whatsoever and the construction sought is contrary to the plain intent of the tariff, I think such shipper should have no standing before this Commission.

I recommend that the application be denied and submit the following order:

**ORDER.**

Golden Gate Brick Company having filed its complaint against the Western Pacific Railway Company praying for reparation on certain shipments of sand referred to in the opinion hereto, and a hearing having been held and being fully apprised in the premises,

*It is hereby ordered that the application be and the same is hereby denied.*

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of April, 1913.



## DECISION No. 574.

IN THE MATTER OF THE APPLICATION OF MILL VALLEY  
AND MOUNT TAMALPAIS SCENIC RAILWAY TO SELL  
AND OF MOUNT TAMALPAIS AND MUIR WOODS RAIL-  
WAY TO PURCHASE THE ENTIRE PROPERTY OF MILL  
VALLEY AND MOUNT TAMALPAIS SCENIC RAILWAY.

Application No. 437.

*Decided April 12, 1913.*

Application by the Mill Valley and Mount Tamalpais Scenic Railway to sell all of its property to Mount Tamalpais and Muir Woods Railway, and by the latter company to acquire same, and to issue in payment therefor \$300,000 capital stock. The new company recently was incorporated by stockholders of the vendor company for the purpose of taking over said property and financing extensions and improvements to the existing railway system. A substantial margin being found between the value of the property and the amount of the proposed capital stock of the new company, and the indebtedness of the old company, which is to be assumed by the new company, the application was granted.

*William Thomas*, for Applicant.

## REPORT OF THE COMMISSION.

THELEN and LOVELAND, *Commissioners*.

This is an application on the part of Mill Valley and Mount Tamalpais Scenic Railway to sell and of Mount Tamalpais and Muir Woods Railway to purchase the entire property of Mill Valley and Mount Tamalpais Scenic Railway for the consideration of 3,000 shares of the capital stock of the Mount Tamalpais and Muir Woods Railway, fully paid, having a par value of \$100 each.

The Mill Valley and Mount Tamalpais Scenic Railway is the owner of a line of railway from Mill Valley, in Marin County, up Mount Tamalpais to a point near the summit, with a branch line from the summit to Mesa Station (the double bow knot) to Muir Woods, and of taverns on Mount Tamalpais, in Muir Woods and at West Point, and of some 192 acres of land in and about Muir Woods. This company has an authorized capital stock of 2,000 shares of the par value of \$100 each, all of which capital stock has been issued, and a bonded indebtedness as follows:

|                                       | Authorized.        | Outstanding.       |
|---------------------------------------|--------------------|--------------------|
| First mortgage 5 per cent bonds-----  | \$100,000 00       | \$100,000 00       |
| Second mortgage 5 per cent bonds----- | 100,000 00         | 30,500 00          |
|                                       | <hr/> \$200,000 00 | <hr/> \$130,500 00 |

The company reports sinking funds for the retirement of these bonds as follows:

|                            |                   |
|----------------------------|-------------------|
| First mortgage bonds-----  | \$37,516 26       |
| Second mortgage bonds----- | 12,928 75         |
|                            | <hr/> \$50,445 01 |

Subtracting this amount from the bonds outstanding, there is remaining a net bonded debt of \$80,054.99. The company reports other indebtedness totaling \$36,956.88, thus making a total indebtedness of \$117,011.87.

Attached to the application and marked "Exhibit B" is a profit and loss statement for the year 1912, as follows:

|  |                   |
|--|-------------------|
| Railway—   |                   |
| Passenger receipts -----   | \$70,359 16       |
| Freight receipts -----   | 645 50            |
|  | <hr/> \$71,004 66 |
| Operating expense—   |                   |
| Maintenance of equipment-----  | \$8,880 43        |
| Maintenance of way-----  | 5,768 37          |
| Fuel oil -----   | 5,272 78          |
| Gasoline fuel -----  | 349 77            |
| Oil and waste-----   | 198 57            |
| Train service -----  | 10,314 10         |
| Train expense -----  | 543 61            |
|  | <hr/> 31,327 63   |
| Net earnings of railway-----   | \$39,677 03       |
| Tavern of Tamalpais, net earnings-----   | \$2,040 53        |
| Muir Inn net earnings-----   | 57 27             |
|  | <hr/> 2,097 80    |
| Net earnings of railway hotels-----  | \$41,774 83       |
| General expense—   |                   |
| Advertising -----  | \$5,462 84        |
| General service -----  | 4,770 00          |
| General expense -----  | 2,404 48          |
| Interest -----   | 7,691 29          |
| Taxes -----  | 3,759 66          |
| Insurance -----  | 1,112 50          |
| New survey account (for Railroad Commission)--   | 2,370 61          |
| Depot rent -----   | 600 00            |
| Tavern of Tamalpais, repairs-----  | 108 86            |
|  | <hr/> 28,280 24   |
| Net gain -----   | \$13,494 59       |
| Add rent receipts-----   | 1,335 70          |
| Add sundry receipts-----   | 195 11            |
| Add accumulated earnings, sinking fund (first mortgage bonds from September, 1907, to June 30, 1912)-----  | 5,827 20          |
| Add accumulated earnings, sinking fund (second mortgage bonds from September, 1909, to June 30, 1912)----- | 928 75            |
|  | <hr/> \$21,781 44 |
| Net gains all sources-----   | \$21,781 44       |

During the year 1912, the company paid a 5 per cent dividend on its entire capital stock, amounting to \$10,000.

The company submitted an estimate of the original cost, the reproduction value and the present value of its property as follows:

|                          |              |
|--------------------------|--------------|
| Original cost.....       | \$461,702 02 |
| Reproduction value ..... | 555,807 73   |
| Present value .....      | 563,045 25   |

The company claims that a considerable portion of its right of way and other real estate having a present value of some \$41,000, was donated to the company and that the value thereof is not included under the item "Original Cost." Assuming, for the purposes of this application, as a present value of the property the original cost thereof, estimated by applicant at \$461,702.02, and bearing in mind the indebtedness of \$117,011.87 which is to be assumed by the new company, and the issue of capital stock in the amount of \$300,000, to be paid by the new company for the property of the old company, it is evident that there is a substantial margin between the value of the property and the amount of the proposed capital stock of the new company and the indebtedness of the old company which is to be assumed by the new company.

The Mount Tamalpais and Muir Woods Railway, hereinafter referred to as the new company, was incorporated on February 14, 1913, for the purpose of taking over the old company and of building an extension from a convenient point on the main line near West Point Station to Bolinas, on the Pacific Ocean. The old company finds it necessary to make certain improvements in its property, necessitating the expenditure of quite a large sum of money, which it is desired to secure from the sale of stock. The stockholders of the present company are unwilling that additional stock should be issued at par, because they feel that the stock is worth more than par at present and they are unable to secure more than par for it. They accordingly conceived the idea of organizing a new company to take over the property of the present company for \$300,000 in capital stock of the new company, with the intention of thereafter selling additional stock of the new company at par to finance the proposed extensions and improvements.

We find that the proposed plan is a reasonable one, and that the interests of the public are duly protected thereby, and recommend that the application be granted. We submit herewith the following form of order:

#### ORDER.

Mill Valley and Mount Tamalpais Scenic Railway and Mount Tamalpais and Muir Woods Railway having made application to the Railroad Commission for an order authorizing the sale of the property of the former corporation to the latter corporation and the purchase by the latter corporation of the property of the former corporation for the consideration of three thousand (3,000) shares of the capital stock of

the Mount Tamalpais and Muir Woods Railway, fully paid, at one hundred (\$100) dollars per share, and the Commission finding that the purposes for which said capital stock is to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that said application be and the same is hereby granted, subject to the following conditions:

1. When said sale shall have been consummated, the Mount Tamalpais and Muir Woods Railway shall make a verified report to the Commission, stating the amount of capital stock which has been issued under this order and the consideration paid therefor, and such other information as is required by this Commission's General Order No. 24, in so far as applicable to this order.

2. The authority hereby given to issue capital stock of the Mount Tamalpais and Muir Woods Railway shall apply only to stock issued by said company on or before the first day of October, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of April, 1913.

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DECISION No. 575.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
PACIFIC MILLING COMPANY FOR PERMISSION TO CON-  
TINUE TO MAKE CERTAIN DEVIATIONS FROM ESTAB-  
LISHED RATES.

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Application No. 188.

*Decided April 15, 1913.*

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REPORT OF THE COMMISSION.

Applicant having on April 10, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of April, 1913.

## DECISION No. 576.

## CAMPBELL AND COFFEY

vs.

## SOUTHERN PACIFIC COMPANY.

Case No. 364.

*Decided April 15, 1913.*

*Held.* Rate of \$3.50 per ton on stone and granite, rough or dimensioned, in carload lots between Rocklin and Santa Rosa is excessive and unreasonable and a rate of \$2.50 established as the lawful rate to be charged.

*G. R. Campbell*, for Complainant.

*George D. Squires*, for Defendant.

## REPORT OF THE COMMISSION.

*GORDON, Commissioner.*

The complainant in this case is engaged in shipping rough and dimension stone from Rocklin, California, to Santa Rosa, California, where it manufactures the same for various purposes. The distance from Rocklin to Santa Rosa is 112 miles and the rate now published by the defendant for the movement of stone or granite is \$3.50 per ton, which the complainant alleges is excessive and discriminatory.

The complainant in support of its charge of discrimination calls attention to the fact that the defendant maintains a rate of \$2.50 per ton on stone and granite from Penryn and Rocklin to San Jose, the distance from Penryn to San Jose being 149 miles.

The defendant entered a general denial that the rate of \$3.50 per ton on stone or granite between Rocklin and Santa Rosa was either excessive or discriminatory.

At the hearing, witness for complainant gave testimony as to the volume of stone moving between Rocklin and Santa Rosa; also to the effect that because of the lower rate to San Jose it was placed at a decided disadvantage in competing for monumental work for use in cemeteries adjacent to San Francisco.

The defendant, in justification of the present rate between Rocklin and Santa Rosa, relies principally on the fact that the rate from Rocklin to San Jose is indirectly influenced by water competition from Sacramento to San Francisco; and the further fact that Santa Rosa is located on a branch line and that the service over this branch line is considerably more expensive than on the main line.

It appears that there was handled between Rocklin and Santa Rosa during the year ending August 31, 1912, 171 tons of granite.

The defendant maintains rate on rough or dressed building stone from Placerville to San Francisco—148.7 miles—of \$3.00 per ton.

This involves a branch line haul of 60 miles from Placerville to Sacramento.

The defendant also maintains rate of \$3.00 per ton from Raymond and Knowles to Suisun—202 miles, San Francisco 188 miles, and Sacramento 162 miles. This also involves a branch line haul from Raymond to Berenda, which branch we do not believe produces as much tonnage per mile as the Santa Rosa branch.

The defendant also maintains rate from Ione to Richmond of \$2.50 per ton—distance 128 miles—which involves a branch line movement from Ione to Galt and also the absorption of the charges of the Richmond Belt Railroad for delivery to the city of Richmond.

From the records of the movements of the various commodities over the lines of the defendant within the State of California which are on file with this Commission it appears that but three high grade commodities for distances approximately the same as between Rocklin and Santa Rosa produce an average rate to the defendant of anywhere near \$3.50 per ton. Many commodities of much higher grade than granite or stone average less than \$2.50 per ton on all the traffic handled by the defendant in the State of California. While in individual cases the rates may be higher, the average revenue on each commodity, particularly on low grade commodities, considered separately, will not average \$2.50 per ton for the total volume handled. It must be taken into consideration that these average rates which the defendant receives on the various commodities moved approximately the same distance as between Rocklin and Santa Rosa include all kinds of conditions, competitive and non-competitive, branch line and mountain service.

It is difficult to understand, therefore, on what ground the defendant expects a rate in excess of \$2.50 per ton on a low grade commodity such as stone or granite.

The defendant, it appears, voluntarily offered to reduce the rate from \$3.50 per ton to \$3.00 per ton, which was not acceptable to the complainant.

I find as a fact from the evidence in this case that the rate of \$3.50 per ton on rough and dimensioned stone and granite from Rocklin to Santa Rosa is excessive and unreasonable, and that a rate of \$2.50 per ton is a just and reasonable rate for this service.

I recommend the following order:

**ORDER.**

Complaint having been made that the rate on granite and stone, rough and dimensioned, from Rocklin to Santa Rosa is excessive, unjust and discriminatory and a regular hearing having been held and the Commission being fully appraised in the premises and basing its findings and conclusions upon findings set out in the opinion hereto

and finding as a fact that a rate of \$2.50 per ton is a reasonable rate for the transportation of stone and granite, rough or dimensioned, in carload lots, between Rocklin and Santa Rosa, such rate of \$2.50 per ton is hereby established as the lawful rate to be so charged by the defendant.

*It is hereby ordered* that Southern Pacific Company publish and file with this Commission within twenty (20) days from the date of service upon it of this order tariff containing rate of \$2.50 per ton for the transportation of granite and stone, rough or dimensioned, carload lots, between Rocklin and Santa Rosa.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco this 15th day of April, 1913.

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DECISION No. 577.

IN THE MATTER OF THE REGULATION OF RATES FOR THE  
CARRYING OF FREIGHT BETWEEN THE STREETS  
WITHIN THE BUSINESS DISTRICT OF THE CITY OF LOS  
ANGELES AND LOS ANGELES HARBOR BY SOUTHERN  
PACIFIC COMPANY AND SAN PEDRO, LOS ANGELES AND  
SALT LAKE RAILROAD COMPANY.

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Case No. 313.

*Decided April 15, 1913.*

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The proceeding herein having been initiated by the Commission, for reasons set out in the opinion, and the carriers subsequently having filed rates which are satisfactory to all of the parties involved and which will substantially accord to the adjustment made in Case No. 115, the proceeding is dismissed.

*C. W. Durbrow and Geo. D. Squires*, for Southern Pacific Company.

*A. S. Halsted* for San Pedro, Los Angeles and Salt Lake Railroad Company.

*John W. Shenk*, city attorney, for the City of Los Angeles.

*Loeb & Loeb and Leslie R. Hewitt*, for Los Angeles Harbor Commission.

REPORT OF THE COMMISSION.

ESHLEMAN and LOVELAND, *Commissioners*.

On October 4, 1911, the Commission rendered its decision in Case No. 115, in which it prescribed a schedule of class and commodity rates to be put into effect by the Southern Pacific Company between Los Angeles and the harbor at San Pedro. In consequence of this decision,

the San Pedro, Los Angeles and Salt Lake Railroad Company voluntarily reduced its rates between these same points in order to meet the schedule prescribed by this Commission in the decision affecting the Southern Pacific Company.

One of the elements considered by the Commission in determining the schedule of rates prescribed in Case No. 115 was the absorption of the wharfage and handling charges by the Southern Pacific Company at San Pedro, which fact was expressly noted in the decision in the following language:

“We do not make as great a reduction in these rates as we believe the evidence would justify, because of the absorptions which the carriers make. If it were not for the making of these absorptions, shown in the tariffs affected, we are of the opinion that the rates ordered in by the Commission are still too high, but absorptions and all other circumstances considered, we are still of the opinion that the rates set out in the original order are reasonable rates.”

Thereafter, the carriers operating between Los Angeles and the harbor, filed applications to cancel these wharfage and handling charges and on October 14, 1912, the Commission rendered its decision in this application, being Application No. 253, by which decision the Southern Pacific, San Pedro, Los Angeles and Salt Lake and the Atchison, Topeka and Santa Fe were permitted to cancel those items in their tariffs providing for the absorption of wharfage and handling charges and to make a distinct and separate charge therefor.

The Commission being of the opinion that the decision in Application No. 253, which under the law it was required to make, practically re-established the conditions as regards the rates on traffic between Los Angeles and the harbor which had existed before the decision in Case No. 115, this present action was commenced on the Commission's own initiative with the view of bringing about the rate condition which the Commission intended to produce by its decision in Case No. 115.

Since the initiation of this present case, the effective date of the decision in Application No. 253 has from time to time been extended with the purpose of preventing the absorption order from going into effect until the Commission could again revise the rates, as it would have done had no absorption applied at the time of the decision in Case No. 115, and up to the present time the order in Application No. 253 has not gone into effect. These extensions have been made because the carriers and the representatives of the shippers, understanding that the Commission intended, unless evidence should be introduced changing its opinion, to reduce the rates put in in Case No. 115 by the same amount as the elimination of the absorption would increase them, asked permission to treat respecting these rates with a view to the settlement of the



case without further formal proceedings. The carriers involved have now filed with the Commission class and commodity rates which are satisfactory to the Associated Jobbers of Los Angeles, representing the shippers affected, and the Harbor Commission of Los Angeles, representing the city, and which rates the Commission is of the opinion practically re-establish the condition which the decision in Case No. 115 brought about.

Such being the case, we recommend that Case No. 313 be dismissed and the order in Application No. 253 be made effective concurrently with the going into effect of the tariffs so filed.

We submit the following order :

**ORDER.**

The Commission heretofore having initiated the above proceeding for the reasons set out in the opinion hereto, and the carriers having filed with this Commission rates which are satisfactory to all of the parties involved and which, in the opinion of the Commission, will substantially accord to the adjustment made in Case No. 115 heretofore decided by this Commission, and being fully advised in the premises,

*It is hereby ordered* that the above case be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of April, 1913.

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DECISION No. 578.

IN THE MATTER OF THE APPLICATION OF LIVERMORE WATER AND POWER COMPANY AND W. A. BISSELL TO SELL, AND PACIFIC GAS AND ELECTRIC COMPANY TO PURCHASE THE PROPERTY OF LIVERMORE WATER AND POWER COMPANY AND FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN STOCK OF PACIFIC GAS AND ELECTRIC COMPANY.

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Application No. 438.

*Decided April 15, 1913.*

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Application of Livermore Water and Power Company to sell all of its property, and of Pacific Gas and Electric Company to acquire and pay for said property \$242,000 by giving its one year 5 per cent promissory note in the face amount of \$51,000, issuing 1,400 shares of its common stock at 65 per cent of its par value and by assuming \$100,000 6 per cent bonded indebtedness of the vendor

company. The purchasing company expressed its willingness to lower the rates and improve the service for electricity within the territory involved and declared that it had no immediate intention of asking for an increase of the water rates involved.

*Held*, Approval of consolidation should not be used as a reason for increasing rates. If the utilities resort to such a practice, thereby admitting that the larger utility which absorbs the smaller one is not able after the process to do as well by its consumers as the smaller one was doing theretofore, it will be difficult to persuade the Commission in the future that the public interest requires or is served by such consolidation. In this case, the supply of water being considerably in excess of the needs of the community served, the proper procedure is for the agency in control of the water to take steps to dispose of more of it and thus increase its revenue, rather than by adding to the burden of the present consumers.

*Held*, While the Commission has never heretofore authorized the sale of stock at less than 80 per cent of par and will not authorize the sale of stock at as low a figure as is here suggested, yet, under the circumstances of this case, it is not necessary to prevent the consummation of this scheme, which from every other point of view is of advantage to the public, by reason of the stock transaction suggested.

Application granted, upon the following conditions: (1) the Commission, or any other public authority, shall be bound by the value of the property in the amount estimated by applicants; (2) in any rate proceeding the common stock shall be considered at not less than 80 per cent of par and if in any such proceeding it be found that the value of the property, as estimated herein by applicants, is excessive, any such excess shall be disposed of from the capital account of said Pacific Gas and Electric Company by writing off such amount so found from the \$51,000 herein authorized to be paid; (3) neither the purchase nor anything involved in this proceeding shall be made the basis, by said Pacific Gas and Electric Company, for, nor used as an excuse to increase any rates, either for power or water, within the territory now served by the vendor company.

*H. D. Pillsbury*, for Livermore Water and Power Company.

*Charles P. Cutten*, for Pacific Gas and Electric Company.

#### REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

[This is an application on the part of the Pacific Gas and Electric Company to purchase all the property of the Livermore Water and Power Company. The latter company serves electricity to the towns of Livermore and Pleasanton and intervening territory in the county of Alameda, and water to the town of Livermore.]

Notice of the hearing was sent to the authorities of both of the towns involved and was published in the *Livermore Herald*, published at Livermore, and the *Pleasanton Times*, published in Pleasanton, but no one appeared in opposition to the granting of the application, and I assume the towns involved have no protest to offer.

The applicant, Livermore Water and Power Company, has an authorized issue of 2,000 shares of capital stock at a par value of \$100 per share, all of which stock is owned by W. A. Bissel except stock to qualify directors. There is an outstanding bond issue of \$100,000. The com-

pany presents in its application an appraisal of \$359,804.18. In this appraisal appear items for:

|                                    |              |
|------------------------------------|--------------|
| Organization, franchises, etc..... | \$110,100 00 |
| Cash .....                         | 2,170 68     |
| Bills receivable .....             | 5,468 89     |
| Other miscellaneous assets.....    | 467 25       |

Making a total of..... \$118,206 82

which while covering some items that may be properly chargeable to capital are, in my opinion, not justified in their entirety. Deducting from the full valuation given of \$359,804.18, the total amount of these items, leaves a difference of \$241,579.36.

[ Pacific Gas and Electric Company desires to pay for this property as follows:

|   |              |
|---|--------------|
| 1,400 shares of the common stock of Pacific Gas and Electric Company at \$65 per share..... | \$91,000 00  |
| Note for one year at 5 per cent.....  | 51,000 00    |
| Outstanding bond issue assumed.....   | 100,000 00   |
| Total .....   | \$242,000 00 |

At the hearing revised figures were presented showing an estimated value of \$62,425 for the property devoted to the electrical part of the business of the company, and \$187,300 to the water business, making a total of \$249,725. A large portion of the valuation attributed to the water system consists of water rights, and the testimony shows that this company has purchased practically all of the riparian lands and riparian water rights to the remaining lands on the Mocha Creek, and against these lands and riparian rights the engineer for applicant puts a value of \$25,000. In addition the company owns the Positas Springs, which ownership carries with it a right to develop all of the water from a ranch of 377 acres, and it is testified that there is a possible development from this source of one million gallons of water per day. Against this property the engineer places a value of \$75,000. The remaining \$87,300 is the value of the reservoir and distributing system of the Livermore Water and Power Company. While at the present time only the town of Livermore is supplied with water by this company, the evidence shows that the Pacific Gas and Electric Company is securing a supply of good water which will serve a much larger area by this purchase.

The net earning of the Livermore Water and Power Company for the calendar year of 1912 was \$8,788.55 after paying the interest on the \$100,000 of outstanding bonds.

The owner of these systems, Mr. W. A. Bissell, testified that he desired to dispose of the same because he finds it difficult to secure funds for the extensions and improvements which these growing communities demand. He secures all of his power from the Pacific Gas and Electric Company and charges a top rate for lighting of ten cents per kilowatt hour, and for power six cents per kilowatt hour. The charge for water is at

the rate of twenty cents per thousand gallons with a minimum monthly rate of seventy-five cents per consumer. The Pacific Gas and Electric Company expresses its willingness, if the purchase is approved, to put in a top rate of eight cents for lighting, and to make the necessary extensions and improvements in the territory. This company, likewise, through its representatives, states that there is no immediate intention of interfering with the present rate of twenty cents per thousand gallons charged for water, but it does not bind itself not to apply to increase such rate on the ground that the same is low as compared to other domestic rates around San Francisco Bay. I am not impressed with the suggestion that twenty cents per thousand gallons is a low rate for water, nor am I willing to take as a standard of comparison, without further evidence, the rates charged by the companies serving San Francisco, Oakland, Alameda, and Berkeley. As a matter of fact, as was referred to at the hearing, engineers for water companies in San Diego, testifying for the water companies themselves, have pointed out to this Commission that the rates for water around San Francisco Bay are among the highest in the State. We have every desire to treat the Pacific Gas and Electric Company fairly in any water rates over which we have any jurisdiction, but we do not look with favor upon a consolidation which shall serve to increase the rate for the commodity involved. Having in mind the usual method of developing water in the various portions of the State for domestic purposes, I am impressed with the fact that the selling company here has in its control water which may be offered for sale at comparatively a low cost, and furthermore that the supply is considerably in excess of the needs of the community served. Such being the case, the proper procedure is for the agency in control of this water to take steps to dispose of more of it and thus increase its revenue rather than by adding to the burden of the present consumers. In fact, it has been specifically held by the Supreme Court of the United States that a company having a system constructed beyond the needs of its consumers may not charge the entire expense of maintaining such system upon such consumers (*San Diego Land and Town Company vs. Jasper*, 189 U. S. 439), and the same may certainly be said of a company having in its control water beyond the needs of its present consumers. I understand the intention of the Pacific Gas and Electric Company, if this sale is consummated, is to extend the use of the water.

It appears very clearly that the granting of this application independent of the price paid, will be of advantage to the consumers, provided the water rate is not interfered with and the assertion of the Pacific Gas and Electric Company that it is not now contemplated that application be made to change the water rate coupled with the power of the trustees of the two municipalities involved to prevent increases

unless they are justified, leads me to believe that no disadvantage will result to the consumers of water. But, as I have already said, we do not expect to have this consolidation used as a reason for increasing rates. If the utilities resort to such a practice thereby admitting that the larger utility which absorbs the smaller one, is not able after the process to do as well by its consumers as the smaller one was doing theretofore, it will be difficult to persuade this Commission in the future that the public interest requires or is served by such consolidation.

While I am not of the opinion that sufficient evidence is before the Commission to justify us in accepting the value set out herein for rate fixing purposes, still I believe that taking everything into consideration the amount to be paid for this property is an amount which the Pacific Gas and Electric Company is justified in paying, but this brings me to a consideration of the most difficult question to be determined in the application.

The agreed price, as has already been set out, is \$242,000 made up of bonds, \$100,000, note \$51,000 and cash \$91,000. Against this cash the applicant desires to issue 1,400 shares of its common stock, which would mean that these shares are to be sold at \$65 per share. This Commission has never heretofore authorized the sale of stock at less than \$80, and I do not believe it should be done here. The sale of stock of a utility such as the Pacific Gas and Electric Company at \$65 per share indicates, to my mind, that one of two conditions exist; either the utility is over-capitalized, or it has tied up in presently non-productive property such an amount of capital that the actively earning capital cannot produce an earning upon itself and this dormant capital sufficient to give the owners of such stock what they consider a reasonable earning. This company urges that the second condition is the one that exists with reference to it, but I consider that the Commission is not justified in taking the stockbrokers' and stock dealers' estimate as a proper selling price for such stock. If the first condition suggested here exists, the amount of outstanding stock should be decreased. If the second condition exists and the stock is actually worth more than its market value, then the public will be required to pay upon such value an amount beyond the price at which the stock can be purchased in the market. In this very case Mr. Bissell in taking 1,400 shares of this stock will be given 5 per cent, under the present dividend practice of the Pacific Gas and Electric Company, on \$140,000 and not on \$91,000, and the public will be required to furnish in rates money to earn 5 per cent or any reasonable dividend beyond that amount on \$140,000. We are very much in favor of utilities realizing a part of their funds from stock sales. An ideal healthy utility, it seems to me, is one that has borrowed not beyond 75 per cent of the value of its property and is paying thereon as bond interest 5 per cent, and has secured the remain-

ing 25 per cent from sales of stock at par. Under such conditions if the Commission should allow, as it did in the Palo Alto gas case, 8 per cent on the entire valuation of the property, and the property was valued at say \$100,000, then there would be a net earning of \$8,000 per year, \$3,750 of which would go to the amply secured bondholders, leaving \$4,250 annually to be paid on the \$25,000 outstanding stock, which seems to me would be a pretty good dividend for the man who actually put his money in and took the risk. The trouble too often, however, is that to get this 25 per cent, or a very less amount, \$100,000 or \$200,000 of stock is issued against which the utility desires to earn. It is difficult for me to understand how many of the stockholders of many of the public utilities in this State have risked very much when they have only put the bondholders' money in the property and have gotten stock for little or nothing. The suggestion I have thrown out seems to me to be not only reasonable but very advisable from the view point of the investor, and the fact that the stockholder under such circumstances earns a large rate of interest is not and should not be any of the business of the public. What the public has a right to look to is the property which is being devoted to its service, and if 8 per cent is a reasonable amount for such property to earn, or any other greater or less per cent, the public is not interested in the division thereof. The fact, however, that the Supreme Court has held that the amount of outstanding stocks and bonds shall be considered by a commission, such as this, in fixing rates drives us to the position which we here assume, and we will not authorize the sale of stock at as low a figure as is here suggested.

While I do not desire to resort to a subterfuge, I do not believe under the circumstances of this case, that it is necessary to prevent the consummation of this scheme, which from every other point of view is of advantage to the public, by reason of the stock transaction suggested. Admittedly the price being paid is an estimate, and I am not at all blind to the fact that the right to serve this territory is considered by the Pacific Gas and Electric Company as valuable to it, a value, however, which it cannot capitalize and from which it can reap no benefit other than that benefit which comes to it by finding an enlarged market for its power, and the further fact that if it adequately and sufficiently serves the public in the way that the public is entitled to be served it may reasonably expect to hold this as an exclusive field. Under all these circumstances and the specific understanding that the estimated value of this property here involved is not to be taken by this Commission for rate fixing purposes, I am willing that the company may assume the bonded indebtedness, execute the note of \$51,000 and give in addition 1,400 shares of its capital stock for this property, but when rate fixing inquiries come around, any shrinkage from this value will have to

be taken from the \$51,000 which the company is paying by a short term note, and practically as cash, and not from the stock. In other words, as applies to this purchase price, whenever the public interest is concerned, this Commission desires to have it specifically understood that it will estimate at least \$80 as having been received from each share of this stock, and we do not bind ourselves even to as low a figure as that. The \$51,000 which is not evidenced by stock or outstanding bonded indebtedness is what will be required to be written off if the Commission finds an excessive amount has been paid for this property, and written off from the legitimate surplus of the Pacific Gas and Electric Company. I have taken this method of solving the problem because I desire to recommend the granting of this application, believing that it will be to the interest of the public, but a much greater injury to the public would result, in my opinion, from establishing a precedent that stock may sell at \$65 a share, than the public would lose by the failure to grant this application.

I submit the following order:

**ORDER.**

Livermore Water and Power Company having applied to sell and Pacific Gas and Electric Company having applied to buy all the property of the Livermore Water and Power Company situated in the county of Alameda, State of California, and consisting of an electrical distribution system with necessary appurtenances in the town of Livermore and town of Pleasanton, and territory intervening between said two towns, and a water system consisting of the Positas Springs property and the Mocha Creek property in the county of Alameda, together with pipe lines from such sources of supply to the reservoir of said Livermore Water and Power Company in the town of Livermore, and a water distribution system in said town of Livermore, together with all appurtenances and real estate of whatsoever nature owned by said Livermore Water and Power Company, and all franchises owned by said Livermore Water and Power Company in the county of Alameda, and the towns of Livermore and Pleasanton, the same being referred to in that certain contract entered into between the Livermore Water and Power Company and the Pacific Gas and Electric Company on the 27th day of November, 1912, and attached to the application herein and marked "Exhibit A";

And a hearing having been held and being fully apprised in the premises, the commission finds as a fact that the public convenience and necessity will be served by the granting of the said application of the Livermore Water and Power Company to sell and the Pacific Gas and Electric Company to purchase the above mentioned property on the terms set out in the agreement heretofore referred to, except as to

the price at which the 1,400 shares of common stock of the Pacific Gas and Electric Company is to be sold to the Livermore Water and Power Company, and the Pacific Gas and Electric Company is authorized to pay for said property on the following terms:

By assuming \$100,000 of outstanding bonded indebtedness of the Livermore Water and Power Company; by giving its promissory note for \$51,000 for one year, interest at 5 per cent per annum; and by issuing to said Livermore Water and Power Company 1,400 shares of the common stock of said Pacific Gas and Electric Company.

Basing its order on the foregoing finding of fact and the findings of fact set out in the opinion hereto, *it is hereby ordered,*

1. That the Livermore Water and Power Company is permitted to sell and the Pacific Gas and Electric Company is permitted to buy all of the property of said Livermore Water and Power Company owned by said company in the county of Alameda.

2. In consideration of the sale by the Livermore Water and Power Company to Pacific Gas and Electric Company, Pacific Gas and Electric Company is permitted to assume all of the outstanding bonded indebtedness of the Livermore Water and Power Company, amounting to \$100,000, bearing interest at 6 per cent per annum; to issue and deliver to said Livermore Water and Power Company its promissory note payable one year from date hereof for \$51,000 interest at 5 per cent per annum; and to issue and deliver to the Livermore Water and Power Company 1,400 shares of the common stock of the Pacific Gas and Electric Company.

The permission to do all of these things and each thereof is contingent upon the following conditions:

1. Neither this Commission nor any other public authority shall be bound by the value of the property set out in the contract between Livermore Water and Power Company and Pacific Gas and Electric Company, heretofore referred to, or the value of said property as given in the testimony as the basis for the sale here under consideration.

2. In any proceeding before this Commission, or any other public authority wherein the rates or service of the Pacific Gas and Electric Company are involved, the price secured by said Pacific Gas and Electric Company for the 1,400 shares of its common stock herein authorized to be issued and delivered, shall be considered at not less than \$80 per share; and if in any such proceeding it be found that the value of the property urged by the applicants herein as the basis for this sale and purchase, is excessive, any such excess shall be disposed of from the capital account of said Pacific Gas and Electric Company by writing off from said capital account such amount so found from the \$51,000



herein authorized to be paid, through the note herein approved, up to the total amount thereof.

3. Neither this purchase nor anything involved in this proceeding shall be made the basis by Pacific Gas and Electric Company for, nor used as an excuse to increase any rates either for power or water within the territory now served by the Livermore Water and Power Company, and this order is made in full contemplation of the fact that the Pacific Gas and Electric Company has expressed its willingness to lower the rates and improve the service for electricity within the territory involved, and has no immediate intention of asking for an increase of the water rates involved.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of April, 1913.

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DECISION No. 579.

SCOTT, MAGNER & MILLER ET AL.

vs.

WESTERN PACIFIC RAILWAY COMPANY.

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Case No. 283.

*Decided April 15, 1913.*

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Complainant sought to recover alleged overcharges on carload shipments of hay transported by defendant between November 15, 1910, and May 27, 1912, from points west of Lathrop to San Francisco, on the grounds (1) of violations of long and short haul provisions found in the state constitution and in the so-called Wright Act; and (2) that said charges were in and of themselves unjust and unreasonable. Defendant moved to dismiss on ground of lack of jurisdiction. The shipments in question moved under section 21 of article XII of the state constitution as adopted 1879, the amendment thereto adopted October 10, 1911; the Wright Act in effect March 19, 1909, to February 10, 1911; the Stetson-Eshleman Act repealing the Wright Act and in effect February 10, 1911, to March 23, 1912, and under the Public Utilities Act effective March 23, 1912. The provisions of these acts and the constitution relating to the subject-matter of this action discussed and applied to the present proceeding.

Under section 22 of article XII of the constitution, prior to October 10, 1911, it was made the duty of the Railroad Commission to establish freight and passenger rates charged by transportation companies and the rates thus established were made "conclusively just and reasonable." There is no record that the Commission ever established rates covering the movement in question while the Wright Act was in effect.

I. With respect to the claim under the long and short haul clauses:

*Held*, The Railroad Commission not having established rates for the movements in question and thereby not having made the rates charged conclusively just and reasonable, a substantive right to compensation arose under the Wright Act (section 31-d) for alleged violations of the long and short haul clauses.

*Held*, As no attempt was made to enforce the remedy provided in said act (sections 20-21), it is unnecessary to consider whether or not that act, in so far as it purported to confer on the Commission power to award reparation other than for a violation of its orders, is in violation of the provisions of section 22 of article XII of the constitution of 1879.

*Held*, That a right which arose under the Wright Act remained alive under the Stetson-Eshleman Act (section 44) and also the Public Utilities Act (section 74-a) and may be enforced if a remedy for its enforcement now exists, applicable thereto, and if the bar of the statute of limitations has not fallen. (Cases cited.)

*Held*, When a statute is passed establishing a period of limitations applicable to rights theretofore created (Public Utilities Act, section 71-b), a reasonable time must be given for the prosecution of an action before the statute works a bar; that the reasonable time to commence proceedings before this Commission to enforce rights arising under the Wright Act and still alive is two years subsequent to March 23, 1912, on which day the Public Utilities Act became effective.

*Held*, The only period of time during which rights may have accrued to complainant under the long and short haul clause between November 15, 1910, and May 27, 1912, was the period from November 15, 1910, to February 10, 1911, during which period the Wright Act was effective. Whether any rights arose during that period will depend on whether or not facts adduced at the hearing will show that the conditions and circumstances surrounding the shipments from points west of Lathrop to San Francisco were substantially similar to those surrounding shipments from Lathrop to San Francisco.

II. With respect to the claim that the rates charged were inherently unjust and unreasonable:

*Held*, If the Commission had established defendant's rates, as it was its duty under the constitution to do, no right to reparation could have arisen on the theory of unjust or unreasonable rates on the facts as stated in this complaint prior to October 10, 1911. In a scheme providing that the State itself establishes rates which shall be conclusively just and reasonable, there is no room for the doctrine of reparation except upon the allegation that the defendant charged rates in excess of those established, and no such allegation is here made.

*Held*, As the carriers now make and file their own rates, pursuant to amendment to section 22 of article XII of the constitution adopted October 10, 1911, they should be liable to make reparation if these rates are unjust and unreasonable. While the remedy enabling the shipper to enforce his right to reparation under the changed system was not established until March 23, 1912 (Public Utilities Act, section 71-a), the right existed since October 10, 1911, and on March 23, 1912, the remedy met the particular existing right and the remedy may be applied to any right to reparation arising since October 10, 1911.

*Held*, Whether the rates complained of are unjust and unreasonable so as to give a cause of action on rates collected since October 10, 1911, is a question of fact as to which evidence will be received.

Motion granted except as to those portions of the complaint based on the long and short haul provisions of the Wright Act and on the collection of alleged unjust rates since October 10, 1911, on which points a hearing will be had.

*J. O. Bracken and Henry F. Marshall*, for Complainants.

*Allan P. Matthew*, for Defendant.

*E. W. Camp*, for Atchison, Topeka and Santa Fe Railway Company.

*H. C. Booth and George D. Squires*, for Southern Pacific Company.

*Seth Mann*, for San Francisco Chamber of Commerce.

*Thomas A. Thatcher*, for various lumber companies.

#### REPORT OF THE COMMISSION.

This is an action to recover the sum of \$139.58, being alleged overcharges on carload shipments of hay alleged to have been transported

over the line of the defendant railway company between November 15, 1910, and May 27, 1912, from points west of Lathrop, California, to San Francisco. Complainants base their action on two distinct grounds.

1. They claim that the charges collected are in violation of long and short haul provisions found in the constitution of this State, and also in the so-called Wright Act.

2. They claim that, entirely irrespective of long and short haul clauses, the charges collected were in and of themselves unjust and unreasonable.

The prayer is for an order directing the payment of reparation and commanding the defendants henceforth to desist from charging a rate in excess of \$1.35 per ton applying to carload shipments of hay from points west of Lathrop to San Francisco. The defendant moved to dismiss the complaint on the ground that this Commission has no jurisdiction to award the relief prayed for.

In ruling on this motion, it becomes necessary to examine with care the constitutional and statutory provisions relating to the subject-matter of this action, and in effect between November 15, 1910, and May 27, 1912. We assume that it is our duty to consider all these provisions, in so far as possible, to be constitutional. If any provision, either in the state constitution or the statutes, is to be declared unconstitutional, it is for the courts and not this Commission to make the declaration. Our purpose will be to try to ascertain the meaning of these provisions and their applicability to the present proceeding, on the assumption that these respective provisions are not a violation of the state or federal constitution.

We shall first consider the claim under the long and short haul clauses, and then the claim as to the inherent injustice and unreasonableness of the rates.

## I.

### LONG AND SHORT HAUL CLAUSES.

#### 2. *Constitution of 1879.*

Section 21 of article XII of the constitution of this State, prior to its amendment on October 10, 1911, read as follows:

"No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other state. *Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing or port, at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station, port or landing. Excursion and commutation tickets may be issued at special rates.*"

It will be noted that the long and short haul provision of this section differs materially from the provision generally found in present day statutes. The usual provision is that the carrier shall not charge a greater compensation for a transportation for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance. Hence, if a commodity is transported under the present usual rule from point A through point B to point C, the case falls within the rule. The provisions of the constitution of 1879, however, look only to the point of destination. The offense under those provisions was not complete unless other transportation was made for a lesser charge to some "more distant station, port or landing," *i. e.*, to some point D beyond point C. In the present case, there was no point on defendant's line beyond San Francisco and no lesser charge to any more distant point beyond. Hence, under the facts of this case, no cause of action arose under the long and short haul clause of the constitution of 1879.

2. *Act of March 19, 1909. (Wright Act.)*

On March 19, 1909, the so-called Wright Act was approved. This act remained in effect until February 10, 1911, on which day it was repealed by what is known as the Stetson-Eshleman Act. During this period, a considerable number of shipments, referred to in the complaint in this proceeding, moved.

The Wright Act provided for the organization of the Railroad Commission, and defined its powers and duties and the powers and duties of transportation companies. Section 31-*d* contained a long and short haul provision differing from that contained in the constitution of 1879, concurrently in effect, and reading as follows:

"No common carrier subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transportation of passengers or of a like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any such common carrier to charge and receive as great a compensation for a shorter as for a longer distance haul."

Under this section, the offense was complete if the longer haul for the lesser compensation was made *from* as well as *to* a more distant point than the shorter haul. This language would seem to apply to cases such as those now under consideration, in which shipments of hay are alleged to have been transported from Lathrop to San Francisco at rates less than those charged for similar shipments from Altamont, Coecken, Carbona, and Livermore, all of which places are intermediate between Lathrop and San Francisco. Counsel for the defendant, how-

ever, draws attention to the words "under substantially similar circumstances and conditions" and contends that the facts alleged do not fall within the statute, for the reason that the circumstances affecting the longer and the shorter hauls are not substantially similar, in that the defendant must meet water competition at Lathrop, the more distant point, and not in the shorter hauls from points west of Lathrop, intermediate between that point and San Francisco.

Section 31(d) of the Wright Act is substantially the same as section 4 of the Interstate Commerce Act as it stood prior to the amendment of June 18, 1910. Under the statute as it originally stood, it was repeatedly held that the carriers were relieved from the restraints imposed by the section whenever actual or potential competition operated to compel the acceptance of lower rates for the longer than for the shorter haul.

*Atchison, Topeka and Santa Fe Railway Co. vs. Denver and New Orleans R. R. Co.*, 110 U. S. 678, 683.

*Interstate Commerce Commission vs. Alabama Midland Ry. Co.*, 168 U. S. 144.

*Louisville & Nashville R. R. Co. vs. Behlmer*, 175 U. S. 648.

*Ex parte Koehler*, 31 Fed. 315.

*Interstate Commerce Commission vs. Atchison, Topeka and Santa Fe R. R. Co.*, 50 Fed. 295.

That the same construction will be given to section 31 (d) of the Wright Act, which section was apparently copied from the Interstate Commerce Act, is elementary. Whether the circumstances and conditions surrounding the longer haul in this case were or were not similar to those surrounding the shorter haul is a question of fact, as to which evidence must be taken in this proceeding if a right could arise and did arise under the Wright Act and if this Commission is now in a position to enforce that right.

If the circumstances and conditions surrounding movements from Lathrop to San Francisco and from intermediate points to San Francisco were substantially similar, it seems clear that a right to be compensated for a loss sustained arose under the Wright Act, under the facts of this case. The solution of the problem would be less difficult if the Railroad Commission had actually established the defendant's rates of charges applying to the facts in this case. By the provisions of section 22 of article XII of the constitution of this State, as it stood prior to October 10, 1911, it was made the *duty* of the Railroad Commission "to establish rates of charges for transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make." The rates and fares "established by said commission" were made "conclusively just and reasonable" in all controversies, both civil and

criminal, and a railroad corporation or transportation company which failed or refused to conform to such rates as the Railroad Commission should establish or which should charge rates in excess of thereof, was subject to a fine not exceeding \$20,000 for each offense.

Acting under this provision of the constitution, the Railroad Commission on June 11, 1909, as shown by its minutes, established the rates of charges for the transportation of passengers and freight on what is known as the Tesla branch of the Western Pacific Railway Company, formerly owned by the Alameda and San Joaquin Railroad Company, between Stockton and Tesla. There is no record that the Commission ever established any other rates to be charged by defendant and particularly none covering the movement in question, while the Wright Act was in effect. On June 11, 1909, August 2, 1909, and November 9, 1909, the Commission established the rates then in effect on practically all the transportation companies of the State, but no action other than that of June 11, 1909, seems ever to have been taken during the period of the Wright Act as to any of the defendant's rates in this State.

If the Railroad Commission had established the rates to be charged by this defendant for both longer and shorter hauls, it might well be held that the defendant could not thereafter, as long as it conformed to the rates so established, be compelled to pay for a violation of the long and short haul clause. Otherwise, the defendant would have been compelled to pay damages if it charged the rates established by the Commission and also a fine up to \$20,000 for each offense if it failed to charge those rates. It would be compelled to pay both if it obeyed and if it disobeyed the Railroad Commission's order. There would be much reason for holding that after the Railroad Commission had established the rates, as commanded by section 22 of article XII of the constitution, the long and short haul clause of the constitution would no longer avail a shipper except as a basis for an application to the Commission to change the rates established by it so as to conform to the long and short haul principle established by the constitution. It becomes unnecessary, however, to consider this question further at this time for the reason, as heretofore stated, that the Railroad Commission did not during the period of the Wright Act establish the rates charged or to be charged by defendant on movements of hay transported between the points specified in the complaint in this case. Those rates were railroad-made rates and not state-made rates. As heretofore stated, if the circumstances and conditions surrounding the longer and the shorter haul movements were substantially similar, a substantive right to compensation arose under the Wright Act. A remedy for the enforcement of this right by the Railroad Commission was established by sections 20 and 21 of the Wright Act, providing for an investigation by the Railroad Commission upon complaint as to any violation by a

transportation company of any provision of the act or of the constitution of this State. The Commission was specifically empowered to make its order awarding damages for violations of the act.

As no attempt was made to secure relief under the Wright Act on the shipments involved in the present proceeding, it becomes unnecessary to consider whether or not that act, in so far as it purported to confer on the Railroad Commission power to award reparation other than for violation of its own orders, is in violation of the provisions of section 22 of article XII of the constitution of 1879. In the case of *Edson vs. Southern Pacific Company*, 133 Cal. 26, the Supreme Court of this State expressly held that under section 22 of article XII of the constitution, the Commission had no power to make a determination in any cases except those arising from violations of its own orders establishing rates or systems of accounts. This is a matter affecting the remedy as distinguished from the right and is not material here, for the reason that up to the time of instituting the present proceeding, no attempt was ever made to apply a remedy to the causes of action alleged in the complaint.

Section 21 of the Wright Act also provided a statute of limitations as follows:

"All complaints for the recovery of damages shall be filed with the Commission within one year from the time the cause of action accrues and not after, and the petition for the enforcement of an order of the Commission for the payment of money shall be filed in the Superior Court within six months from the date of the order and not after."

Defendant pleads the statute of limitations as to all rights which may have been created under the Wright Act, and particularly urges that the repeal of the Wright Act extinguished all such rights.

The Wright Act was repealed by the act of February 10, 1911, commonly known as the Stetson-Eshleman Act. Section 50 of the latter act by specific reference repealed the Wright Act in toto. Section 44 further expressly kept alive rights which might have been theretofore created. Said section 44 reads as follows:

"This act shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen, or may hereafter arise, under any law of this state; and all penalties arising under this act shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty."

The present Public Utilities Act, which became effective on March 23, 1912, and superseded the Stetson-Eshleman Act, provides in section 74 (a) that rights then existing should not be released or waived in the following language:

"This act shall not have the effect to release or waive any right of action by the state, the commission, or any person or corporation for any right, penalty or forfeiture which may have arisen or accrued or may hereafter arise or accrue under any law of this state."

It thus appears that a right which arose under the Wright Act remained alive under the Stetson-Eshleman Act and also the present Public Utilities Act and may be enforced if a remedy for its enforcement now exists, applicable thereto, and if the bar of the statute of limitations has not fallen.

The remedy is found in section 60 of the Public Utilities Act, reading in part as follows:

"Complaint may be made by the Commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation of any provision of law or of any order or rule of the Commission."

It will be noted that the section specifically includes complaints as to charges *heretofore* established or fixed by or for any public utility, and so supplies a remedy applicable to the present case. Section 71 of the Public Utilities Act specifically gives to the Commission the right to compel the making of reparation for excessive or discriminatory charges. Hence, where a substantive right to reparation heretofore arose from charges established by or for a public utility, there can be no reasonable doubt of the Commission's right to make an order compelling the making of the reparation, unless the bar of the statute of limitations had fallen. That a present day remedy can be applied to a right theretofore created, under the circumstances here disclosed, is no longer a matter for doubt in this State after the decision of our Supreme Court in the case of *Chapman vs. State*, 104 Cal. 690. To the same effect see *Teralta Land Company vs. Shaffer*, 116 Cal.; *Melvin vs. State*, 121 Cal. 16; *Denning vs. State*, 123 Cal. 316, 319.

Admitting the creation of a right under the Wright Act and the existence of a remedy applicable thereto, if the bar of the statute of limitations has not fallen, we are brought to a consideration of the question of the statute of limitations. On this question, as on others argued before the Commission in this proceeding, there have been almost as many conflicting views as there were lawyers presenting them. The Wright Act, as heretofore stated, was repealed on February 10, 1911.



The act contains a one year statute of limitations applying to proceedings before the Railroad Commission. Hence, all causes of action accruing prior to February 10, 1910, were barred by the provisions of the act. All the claims, if any, in this proceeding accrued subsequent to February 10, 1910, and were alive when the Wright Act was repealed. The Stetson-Eshleman Act, in section 48 thereof, established a statute of limitations of three years, but only for "violations of any of the provisions of *this act*." Manifestly, this section does not apply to violations of a preceding act. The repeal of the one year statute of limitations established by the Wright Act left rights created under that act without any statute of limitations running against them. The limitations prescribed by the Code of Civil Procedure were not applicable to such rights and no other limitations were established at that time.

Section 71b of the Public Utilities Act provides that "all complaints concerning excessive or discriminatory charges shall have been filed with the Commission within two years from the time the cause of action accrues." Assuming that the three year period of the Stetson-Eshleman Act does not apply to rights arising under the Wright Act, but that the two year period of the Public Utilities Act does apply, it is clear that the courts will not construe the two year period of the Public Utilities Act so as to take away the pursuit of a remedy on rights which had been created two years before, more or less, and against which no statute of limitations was running subsequent to the repeal of the one year period prescribed by the Wright Act. We are of the opinion that the courts will follow the rule established in *Culbreth vs. Downing*, 121 N. C. 205, 28 S. E. 294, to the effect that when a statute is passed establishing a period of limitations applicable to rights theretofore created, a reasonable time must be given for the prosecution of an action before the statute works a bar. We are of the opinion that a reasonable time to commence proceedings before this Commission to enforce rights arising under the Wright Act and still alive, is two years subsequent to March 23, 1912, on which day the Public Utilities Act became effective.

We hold that defendant's point as to the statute of limitations is not well taken.

3. *February 10, 1911–October 10, 1911.*

The Stetson-Eshleman Act was in effect from February 10, 1911, until March 23, 1912. It contained no long and short haul clause. Consequently, during this period the only effective long and short haul provision was that contained in the constitution. The long and short haul provisions of the constitution of 1879 we have already held to be inapplicable to the present proceeding. Consequently, no right of action arose out of the facts stated in this case on any long and short haul provision from February 10, 1911, to October 10, 1911.

4. *October 10, 1911, to date.*

On October 10, 1911, section 21 of article XII of the constitution was amended to read in part as follows:

"It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates; *provided, however*, that upon application to the Railroad Commission provided for in this constitution such company may, in special cases, after investigation, be authorized by such Commission to charge less for longer than for shorter distances for the transportation of persons or property and the Railroad Commission may from time to time prescribe the extent to which such company may be relieved from the prohibition to charge less for the longer than for the shorter haul."

Substantially the same provisions are found in section 24 (a) of the Public Utilities Act. Acting under the authority granted by section 21 of article XII of the constitution as amended, the Commission heretofore, on February 15, 1912, issued its order in Case No. 214, authorizing the carriers of the State to continue their deviations from the long and short haul clause until the Commission could determine definitely the instances, if any, in which it will permit deviations to continue to be made. While the Commission's order authorizing the temporary continuance of the deviations remains in effect, no cause of action can arise from alleged violations of the long and short haul provision of the Constitution.

It follows that the only period of time during which rights may have accrued to complainants under a long and short haul clause between November 15, 1910, and May 27, 1912, was the period from November 15, 1910, to February 10, 1911, during which period the Wright Act was effective. Whether any rights arose during that period will depend on whether or not facts adduced at the hearing will show that the conditions and circumstances surrounding the shipments from points west of Lathrop to San Francisco were substantially similar to those surrounding shipments from Lathrop to San Francisco.

## II.

### UNJUST AND UNREASONABLE RATES.

We come now to complainants' claim that the rates charged by defendant were inherently unjust and unreasonable, entirely irrespective of any alleged violation of the long and short haul provisions.

At the common law a shipper who is compelled by a carrier to pay

an unjust or unreasonable rate could sue to recover the excess which he had paid above a just and reasonable rate. The framers of the constitution of 1879, however, provided in section 22 of article XII that the rates should be established and published by the Railroad Commission and not by the carriers, and that the rates so established and published should be deemed in all proceedings, both civil and criminal, to be conclusively just and reasonable. It could hardly be held that a shipper could recover from a carrier for charging a conclusively just and reasonable rate—a rate, moreover, which the carrier was compelled, under heavy penalties, to charge. If the shipper were dissatisfied, he could apply to the Railroad Commission to alter the rate, but it would certainly be entirely at variance with such a system of state-made rates to hold that the Commission, in addition to making an order as to the just and reasonable rates to be thereafter charged, should also compel the carrier to pay remuneration for having charged the rate which the Railroad Commission compelled it to charge, and which, under the constitution, became a conclusively just and reasonable rate. We are accordingly of the opinion that if the Railroad Commission had established defendant's rates, as it was its duty under the constitution to do, no right to reparation could have arisen, on the theory of unjust or unreasonable rates on the facts as stated in this complaint prior to October 10, 1911. The shipper's remedy would be to petition the Commission to alter the rate and then to sue the carrier if he failed to conform to the rate so established. The United States Supreme Court, in the cases of *Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co.*, 204 U. S. 426; and *Robinson vs. Baltimore & Ohio R. R. Co.*, 226 U. S. 506, has expressed its views with reference to the relation between the Interstate Commerce Commission and the courts in entire harmony with the views herein expressed as to the effect which the establishment of a system of state-made rates had on the common law right to sue for damages by reason of the collection of an unjust or unreasonable rate.

We are convinced that if the Railroad Commission had established the rates in controversy here, there could have been no right to reparation, except for the collection of rates charged in excess of those so established, up to October 10, 1911, at which time the entire system was changed. We refer here not to the remedy but to the right itself. No substantive right to reparation could arise under such circumstances except as indicated, and there would be at present no right to which a remedy could attach. A statute to-day can not create a right out of transactions which happened yesterday.

We are somewhat uncertain as to the effect which the failure of the Railroad Commission to establish the rates here affected has on the

right to reparation prior to October 10, 1911, but have reached the conclusion that the system of state-made rates established by the constitution of 1879 could not have contemplated a right to reparation except in case the carrier charged a rate in excess of that established by the Commission. In a scheme providing that the State itself establishes rates which shall be conclusively just and reasonable, there is no room for the doctrine of reparation except as indicated. The fact that the Commission may have failed in its duty can not change the law or create a new system. We are accordingly of the opinion that on the facts as stated, there being no allegation that the defendant charged rates in excess of those established, no right to reparation on the theory of unjust or unreasonable rates arose prior to October 10, 1911.

In the case of the long and short haul provisions of the constitution and of the Wright Act, we find specific affirmative provisions to which effect must be given, if possible. As hereinbefore indicated, it is difficult to reconcile an inhibition based on the theory of railroad-made rates with the provisions of section 22 of article XII of the constitution, providing for state-made rates. On familiar principles of statutory and constitutional construction, effect should be given to all these provisions if possible. The only way we know to give effect to both the long and short haul clause and to the provisions of section 22 of article XII of the constitution is to hold that the long and short haul clauses, both of the constitution and of the Wright Act, are operative until the State establishes the rates as provided, and that thereafter the long and short haul principle shall govern the Railroad Commission in establishing the rates. We have accordingly held that until the Railroad Commission established defendant's rates for the movements involved in this complaint, the long and short haul provisions of the Wright Act were operative on the defendant.

By amendment to section 22 of article XII of the constitution, adopted October 10, 1911, the entire system of making the rates to be charged by carriers was changed. The provision making it the duty of the Railroad Commission to establish all the rates for common carriers was stricken from the constitution. In lieu thereof, a new system was established, by which the carriers make and file their own rates, with power in the Railroad Commission, on complaint or on its own initiative, to alter the rates so established. As the carriers now establish their rates, they should be liable to make reparation if these rates are unjust and unreasonable. Accordingly, section 21 of article XII of the constitution, as amended on October 10, 1911, apparently in view of the old system, under which reparation could not be awarded except for departures from established rates, was amended to read in part as follows:

“Nothing herein contained shall be construed to prevent the Railroad Commission from ordering and compelling any railroad

or other transportation company to make reparation to any shipper on account of the rates charged to said shipper being excessive or discriminatory; *provided*, no discrimination will result from such reparation."

The Public Utilities Act, in section 71 (a) thereof, finally prescribed the machinery by which the Commission may award reparation in case the charges have been excessive or discriminatory. When the theory of conclusively just and reasonable state-made rates was discarded on October 10, 1911, the substantive right to reparation for an unjust and unreasonable rate revived. While the remedy for enforcing the right was not established until March 23, 1912, we hold that the right existed since October 10, 1911, that on March 23, 1912, the remedy met the particular existing right and that the remedy may be applied to any right to reparation arising since October 10, 1911.

Whether the rates complained of are unjust and unreasonable so as to give a cause of action on rates collected since October 10, 1911, is a question of fact as to which evidence will be received.

This Commission has heretofore decided several reparation cases without a full presentation by attorneys for defendants of the points involved and without knowledge of the action taken by our predecessors in office in establishing or failing to establish rates. The questions have been complicated by conflicting provisions in the state constitution and by doubts as to the constitutionality both of provisions of the state constitution and of the Wright Act. After a full argument made at our request and a careful study both of the law and the facts involved, we have reached the conclusions herein expressed. In so far as this decision may be at variance with this Commission's decisions in earlier cases, we desire the views herein expressed to be taken to represent our matured thought on the subject.

#### ORDER.

The above entitled proceeding having come on regularly for hearing, and defendant having moved to dismiss the complaint on the ground that this Commission has no authority to grant the relief prayed for,

*It is hereby ordered* that said motion be granted except as to those portions of the complaint which are based on the long and short haul provision of the Wright Act and on the collection of alleged unjust and unreasonable rates since October 10, 1911, on which points a hearing will be had on a day hereafter to be set.

Dated at San Francisco, California, this 15th day of April, 1913.

## DECISION No. 580.

IN THE MATTER OF THE APPLICATION OF THE BARSTOW UTILITY COMPANY AND OF THE SOUTHERN SIERRAS POWER COMPANY FOR AN ORDER AUTHORIZING THE SALE AND TRANSFER BY THE SAID BARSTOW UTILITY COMPANY TO THE SOUTHERN SIERRAS POWER COMPANY OF A CERTAIN ELECTRIC PLANT OR SYSTEM AND PROPERTY AT BARSTOW, SAN BERNARDINO COUNTY, STATE OF CALIFORNIA.

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Application No. 371.

*Decided April 15, 1913.*

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Order entered permitting Barstow Utility Company to sell to Southern Sierras Power Company, for \$7,000, an electric lighting plant and system upon condition that the purchase price shall not be taken for rate fixing, or other purposes, as representing the present value of said property.

*I. B. Potter*, for Southern Sierras Power Company.

*W. W. Brison*, for Barstow Utility Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

The approval of this Commission is asked herein, under section 51 (a) of the Public Utilities Act, to the sale, by the Barstow Utility Company and the purchase by the Southern Sierras Power Company, of an electric lighting plant and system owned and operated by the former company in the unincorporated town of Barstow, San Bernardino County, California.

The Barstow Utility Company carries on principally the business of manufacturing and selling ice. In connection with its ice business, and at the request of some commercial houses in Barstow, it installed, about 1910, a small electrical generator and since then has undertaken, in a moderate way, and wholly incidental to its main business, to supply electricity in the town, chiefly for lighting purposes. With the growth of the community the demands for electricity have increased well beyond the capacity of the plant. Without enlarging its electrical generating and distributing system the company finds itself now unable to comply with requests for some sixty additional residential installations. Its plant at present is overloaded and because of this condition complaint has been made by residents of the town during the past year because of the unsatisfactory service. The company states that the expense of maintaining the electrical end of its business is much greater in proportion to the receipts than the expense of

caring for the ice business, in which latter business the reasonable returns are more satisfactory. It does not desire to continue in the electrical business, nor to make the improvements and extensions necessary to the furnishing of adequate and satisfactory service and has concluded negotiations with the Southern Sierras Power Company for the transfer of the plant and system.

The Southern Sierras Power Company is now completing an electric system extending from an hydroelectric power source on Bishop Creek, Inyo County, southerly through said county and the counties of San Bernardino and Riverside through various points of distribution. It is the intention and the desire of this company later to extend its lines to the town of Barstow for the market which there and at points between will be afforded for a portion of the electric current generated at its plants.

Pending the construction of its lines to Barstow, the company is prepared to install, and agrees so to do in the contract of sale, all equipment and machinery at Barstow necessary to properly and adequately supply the demands and needs of the inhabitants.

A copy of the contract of sale, proposed to be executed between the parties, is filed with the petition, wherein it appears that, for a period of not to exceed two years, the vendor company is to act in the capacity of general manager of the property in question, is to conduct the business in behalf of the purchasing company and, at its own expense, is to make plant readjustments to facilitate the installation of new machinery. The agreed consideration for the sale and transfer is \$7,000, in payment of which the purchasing company does not propose or intend to issue any stock or bonds or other evidences of indebtedness to the Utility Company.

A public hearing in the matter was held February 6, 1913, at San Bernardino. No one appeared in opposition to the granting of the application. The proceedings disclosed that a portion only of the consideration to be paid is for the properties, tangible and intangible, to be transferred and that the balance of the consideration is to cover prospective expenses and estimated operation losses to be incurred by the vendor company for the period during which it will act as agent for the purchasing company in caring for and managing the plant and business.

I am of the opinion that the proposed transfer will result in a distinct benefit to the public service in that it is proposed and agreed, on the part of the purchasing company, to install new and improved machinery, changing the electric system from an old direct current system to an up-to-date alternating current system, and to extend the distributing lines and maintain same in an improved and more substantial condition. This should result in adequate and satisfactory service,

not only to the residents of the town now being supplied, but to all other inhabitants of the town desiring the same. For these reasons I recommend that the application be granted with the distinct understanding, however, that the consideration to be paid shall not be taken as representing for rate fixing or other purposes the present value of the property to be transferred.

I submit herewith the following form of order:

**ORDER.**

The Barstow Utility Company having applied for permission to sell, and the Southern Sierras Power Company having applied for permission to purchase, for the sum of \$7,000, the entire plant and equipment used by the Barstow Utility Company in the business of supplying electric current for light, heat, power and other purposes at the town of Barstow, San Bernardino County, State of California, as is more particularly set forth in the agreement of sale entered into by the parties to this proceeding and attached to the application in this proceeding and marked "Exhibit B"; and the Commission being of the opinion that the needs of the public at and in the vicinity of the town of Barstow will be subserved by the granting of this application,

*It is hereby ordered* that the Barstow Utility Company be and the same hereby is authorized to sell, and that the Southern Sierras Power Company be and the same hereby is authorized to purchase, for the sum of \$7,000, the entire plant and equipment of the Barstow Utility Company, used in its business of supplying electric current for light, heat, power and other purposes at the town of Barstow, San Bernardino County, California, upon the following condition and not otherwise, to wit:

The consideration of \$7,000 which the Southern Sierras Power Company is herein authorized to pay for the plant and equipment of the Barstow Utility Company shall not be taken, before this Commission or any other public authority as representing, for rate fixing or other purposes, the present value of the property of the Barstow Utility Company herein authorized to be transferred.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of April, 1913.



## DECISION No. 581.

D. & B. PUMP SUPPLY COMPANY, INCORPORATED,  
*vs.*  
 SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA  
 AND SANTA FE RAILWAY COMPANY AND SUNSET RAIL-  
 ROAD COMPANY.

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Case No. 346.

*Decided April 15, 1913.*

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Complainant for many years having shipped oil well working-barrels under defendant's classification of such commodity as third class, and defendants recently having assessed the rate of first class on movements of these articles, complainant asks to be awarded \$2,320.85 reparation, relying upon Western Classification No. 50, Item 32, page 136. The new rate was assessed without the consent of the Commission as required by law (P. U. Act, Sec. 63a) and without any change having been made in the Western Classification.

Defendants, admitting that oil well working-barrels are not specifically provided for in the Western Classification, allege clerical error in having classified them as third class and rely upon certain provisions in the Western Classification to justify the new rating. Defendant Southern Pacific Company further alleged that all shipments moving prior to February 10, 1911, are barred by the statute of limitations and that this Commission has no jurisdiction to award reparation on any shipment which moved prior to March 23, 1912.

*Held*, That the continued application of a certain rate or classification, when the article is not specifically provided for, establishes the presumption that the carriers regard the rate and classification as just and one that must be maintained or changed only by the consent of the Commission.

*Held*, That oil well working-barrels have been and should be classified as third class and that shippers of this article are entitled to the rate of third class on the outgoing movement and to one half of third class on the return movement, when the article is being returned for repairs.

*Held*, The objection that the Commission has no jurisdiction to award reparation on any shipments which moved prior to March 23, 1912, is not well taken (citing Commission's decision in Case No. 283).

Matter held open, further proceedings to be had in the event of failure of parties to adjust overcharges.

*Charles Clifford*, for D. & B. Pump Supply Company.

*George D. Squires*, for Southern Pacific Company.

*H. P. Anwalt*, for The Atchison, Topeka and Santa Fe Railway Company.

## REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

The complainant in this case is a corporation engaged in the manufacture and sale of oil well supplies, shipping such supplies from the city of Los Angeles, California, to the oil fields of California.

Complainant alleges that for many years it has been shipping an article known as oil well working-barrels which defendants have classified as third class, but recently, without permission of this Commission,

as required by law, and without any change in the Western Classification have arbitrarily assessed the rate of first class on movements of this article. Complainant further alleges that, notwithstanding the fact that in Pacific Freight Tariff Bureau Exception Sheet No. 1-B, C. R. C. 52, Rule 10-E, it is provided that machinery and machines and parts thereof returned to original point of shipment for repairs, take one half of the outbound rate current at time of return movement, defendants have assessed a charge of one half of first class instead of one half of third class on return movements on oil well working-barrels when such barrels are being returned for repairs. Complainant also alleges that in arbitrarily assessing a rate of first class on movements of oil well working-barrels, defendants violated section 63 (a) of the Public Utilities Act, which reads as follows:

SEC. 63. (a) No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified.

Complainant asks for reparation from the various defendants in the amount of two thousand three hundred twenty and 85/100 (\$2,320.85) dollars.

Complainant's claim that oil well working-barrels should move at third class is based upon the following provision in Western Classification under the head of "Oil Well Supplies." After enumerating numerous articles which go to make up oil well supplies, Western Classification No. 50, Item 32, page 136, provides as follows:

—and other tools or appliances used in connection with drilling gas, oil and water wells and not otherwise specified in classification —third class.

The defendant, Southern Pacific Company, admits that oil well working-barrels are not specifically provided for in Western Classification but alleges that they are, as a matter of fact, pump cylinders and as such are properly rated under the provisions of Western Classification No. 50, which read as follows:

Page 152, Item 37. Iron pump cylinders (plain or brass lined) for hand or windmill iron pumps loose—first class.

Item 41 reads:

Pipe for connecting pump heads and cylinders but not exceeding one third of weight of entire shipment.

This last mentioned Item No. 41 appears to cover such pipe as may be included in earloads of pumps or pump cylinders.

The Southern Pacific Company maintains that oil well working-barrels should never have been classed as third class and that it was an

error of its employees in so classing them, for which reason it has refused to protect one half of third class on oil well working-barrels returned for repairs.

Defendant, Southern Pacific Company, for a further answer alleges that all shipments moving prior to February 10, 1911, are barred by the statute of limitations and that this Commission has no jurisdiction to award reparation on *any* shipment which moved prior to March 23, 1912.

The defendants, The Atchison, Topeka and Santa Fe Railway Company and Sunset Railroad Company, in their joint answer, admit that oil well working-barrels are machines and that when same are returned for repairs are entitled to one half of the rate which would be applied on the outbound movement. These defendants contend that oil well working-barrels are not used in connection with drilling oil wells, but are used for the purpose of lifting oil out of a well after same has been drilled; and further contend that oil well working-barrels should be properly classified under the general head of machinery and machines, Item 38, page 120 of Western Classification No. 50, which provides:

Pumps N. O. S. less carloads—first class.

At the hearing, complainant introduced testimony to prove that oil well working-barrels were used in drilling operations to test wells. The defendants introduced testimony showing that, on the property with which witnesses were familiar, oil well working-barrels were very rarely used except after the well was completed. The weight of the testimony was to the effect that oil well working-barrels were principally used after the well was completed. All of these witnesses were, doubtless, honest in their convictions and in their testimony, and the difference in their testimony is explained as follows:

Witnesses for defendants are engaged principally in drilling wells in what may be called "proven territory," while the complainant sought to establish the fact that many oil well working-barrels were used during drilling operating in sinking what are known as "wildcat wells." In other words, the necessity for testing wells during drilling operations would be more necessary to operators working in territory where the chances for securing oil were not as good as on proven land, and the testimony shows that in such operations the oil well working-barrel is used.

A description of the article under consideration will aid in passing upon the justness of our findings in this case. The oil well working-barrel is a wrought iron tube, the usual dimensions being six (6) feet in length by three (3) inches in diameter. When it is being used it contains a plunger and certain linings and is connected with a valve, but the testimony showed that the iron tube, weighing about one hun-

dred and fifty (150) pounds, with the lining and plunger inside, was shipped by itself and the valve also shipped separately. This iron tube is something that is not liable to damage in transit and it is difficult to understand how it can reasonably be maintained that such a piece of iron of this weight, without liability to damage, should be classified as first class, while the valve, which is a highly finished piece of machinery and much more valuable per pound, much more liable to damage in transit, is classed as fourth class. Classification is generally presumed to be consistent with common sense, and it is my opinion that a classification which may be construed so as to provide first class rating on an article such as this oil well working-barrel, is in need of revision.

Defendants admit that oil well working-barrels are not specifically provided for in the classification and, in view of this fact and what has been said as to the character of the article, and inasmuch as these oil well working-barrels are used during the drilling of oil wells, frequently or infrequently, we believe that the proper classification is third class, according to Classification No. 50, Item 32, page 136, Western Classification.

I do not consider that Item 37, page 152, Western Classification No. 50, cited by the defendant, Southern Pacific Company, is applicable in this case, for this item specifically refers to iron pipe cylinders for hand or windmill iron pumps, which cannot be said to cover oil well pumps.

I regard the claim of defendants, The Atchison, Topeka and Santa Fe Railway Company and Sunset Railroad Company, that oil well working-barrels might be properly classified under the head of machines and machinery, Item 38, page 120 of Western Classification, which reads as follows:

Pumps N. O. S. less carloads—first class,

as worthy of more consideration than the claim of defendant, Southern Pacific Company, but for reasons above stated, namely, the character of the article, the fact that it cannot be damaged in transit, the fact that it is used, more or less, in drilling oil wells, the fact that the valve which is attached to it when in operation, although much more expensive and delicate, is classed at fourth class, and, finally, the fact that oil well working-barrels have for years been classed at third class and moved at third class rate, I find that the proper classification for oil well working-barrels has been and is third class, according to Classification No. 50.

It has been the practice of carriers in the past to classify articles by analogy when such articles were not specifically provided for in the classification and the Commission takes the position that the continued classification of an article by analogy establishes that classifica-

tion as a practice which cannot be altered without the consent of the Commission. In saying this, we do not wish to be understood that ordinary mistakes cannot be corrected, but simply that the continued application of a certain rate or classification, when the article is not specifically provided for, establishes the presumption that the carriers regard the rate and classification as just and one that must be maintained or changed only by consent of the Commission.

With reference to the claim of the defendant, Southern Pacific Company, that claims for refunds are barred by the statute of limitations on all shipments moving prior to February 10, 1911, and that the Commission has no jurisdiction to award reparation on any shipment which moved prior to March 23, 1912, I find that this point is not well taken and refer to the opinion and order in case No. 283, in which the question of claims being barred by the statute of limitations and the jurisdiction of the Commission to award reparation are fully analyzed and passed upon.

In holding that oil well working-barrels have been and should be classified as third class, I incidentally hold that shippers of that article are entitled to the rate on third class on the outgoing movement and to one half of third class on the return movement, when the article is being returned for repairs.

I recommend the following order:

**ORDER.**

The D. & B. Pump Supply Company, incorporated, complainant, of Los Angeles, California, having complained of the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Sunset Railroad Company, defendants, the basis of such complaint being that said defendants have arbitrarily raised the rate on an article, known as oil well working-barrels, from the rate on third class to the rate on first class, without permission of the Railroad Commission, and without making any change in the Western Classification; and a hearing having been duly held; and it appearing to the Commission that the article in question, oil well working-barrels, have been and should be classed as third class and moved at the third class rate; it is held that third class, according to Western Classification No. 50, is the proper class to be applied to oil well working-barrels.

It is further held that the contention of the defendant, Southern Pacific Company, that all claims on shipments moving prior to February 10, 1911, for reparation, are barred by the statute of limitations, and that this Commission has no jurisdiction to award reparation on any shipment which moved prior to March 23, 1912, is not well taken, the opinion of the Commission on these matters being clearly set forth in Case No. 283, to which reference is made.

It is also held that on the movement of oil well working-barrels being returned for repairs one half of third class should be assessed.

*It is therefore hereby ordered* that defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Sunset Railroad Company, adjust all overcharges on shipments of oil well working-barrels where such oil well working-barrels have been classed and the movement paid for at the rate of first class to the third class rate, by refunding to shippers the difference between the first class and the third class rate on outgoing movements and the difference between one half of first class and one half of third class on return movements where oil well working-barrels were returned for repairs, and that hereafter this article be classed as third class and moved at that rate.

We will not at this time mention specifically each shipment upon which complainant claims adjustment of overcharge should be made, as it is expected that the carriers will adjust all overcharges due to erroneous classification and rating of oil well working-barrels. Should the parties to this application fail to agree upon the specific shipments upon which reparation should be made to applicant, they, or either of them, may report to the Commission such failure to agree and the Commission will, thereupon, set the matter for a further hearing and will make a supplemental order, if necessary. And it is understood that no finding is made in this opinion and order affecting reparation in specific cases, that matter being held open for future determination.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of April, 1913.

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DECISION No. 582.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR THE DETERMINATION OF WHETHER IT IS NECESSARY FOR SAID COMPANY TO SECURE FROM THIS COMMISSION A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR A PERMIT UNDER THE PROVISIONS OF SECTION 50 OF THE PUBLIC UTILITIES ACT, FOR THE PROSECUTION OF ITS OPERATIONS IN SAN BERNARDINO COUNTY, AND IF SO, FOR AN ORDER GRANTING SUCH CERTIFICATE OR PERMIT.

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Application No. 485.

*Decided April 18, 1913.*

Applicant holding a franchise adopted July 24, 1911, by the supervisors of San Bernardino County has, in pursuance of rights and privileges therein granted,

expended upwards of \$400,000 in constructing an overhead electrical distribution system in said county outside of incorporated cities and towns. As part of said system, the company recently began the erection of a six mile extension ostensibly with the object of supplying a customer now served by the Southern California Edison Company. Upon complaint of the Edison Company that, under section 50 of the Public Utilities Act, effective March 23, 1912, the consent of this Commission was prerequisite to the beginning of said construction, applicant suspended the work and applied for a determination in the matter and for approval to proceed with the completion of its system in said county, provided such approval is necessary.

Section 50 of the Public Utilities Act interpreted. The Commission found that, prior to March 23, 1912, applicant began actual construction work and subsequently thereto prosecuted such work in good faith uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking under the said franchise, but had not, prior to said date, actually exercised its said franchise rights.

*Held*, it is not necessary for applicant to secure, under section 50 (a) of the Public Utilities Act, a certificate of public convenience and necessity authorizing the construction of the extension contemplated.

*Held*, the performance, under a franchise, of any of the work thereby authorized does not amount to the actual exercise of the franchise within the meaning of section 50 (b) of the Public Utilities Act. The proper interpretation of the term "actually exercised" is "completely exercised." If a utility, prior to March 23, 1912, began and partially completed actual construction, in pursuance of franchise rights and privileges, it might proceed under such rules and regulations as the Commission might prescribe to the completion or the complete exercise of the rights which had been granted.

*Held*, that applicant be permitted to proceed to the completion of its work anywhere in San Bernardino County to the extent permitted by its franchise, subject to such rules and regulations as the Commission may from time to time prescribe.

*Charles F. Potter and John R. Dixon, for Applicant.*

*H. H. Trowbridge, for Southern California Edison Company, Intervenor.*

#### REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application on the part of The Southern Sierras Power Company for a determination by this Commission as to whether or not a certificate of public convenience and necessity or a permit of any kind must be secured from this Commission before said company may continue certain operations in the county of San Bernardino, and if so, for an order of this Commission granting a certificate of public convenience and necessity or a permit, as the case may be, for authority to proceed with the completion of applicant's work in the county of San Bernardino.

Applicant was incorporated in June, 1911, under the laws of the State of Wyoming. The company contemplates the construction of a transmission line from near Bishop, in Inyo County, to San Bernardino and Riverside counties and the construction of distributing lines radiating therefrom. In October, 1911, the company commenced construction work on two hydroelectric plants in Inyo County, of a capacity respec-

tively of 1,500 and 2,000 kilowatts. This work was commenced under contracts made in June and July, 1911, and has been prosecuted continuously without interruption subsequent to said time. Transmission lines into San Bernardino and Riverside counties have now been completed and some two hundred miles of distributing lines have been constructed, whereof some twenty miles are located in San Bernardino County. The transmission and distributing lines in San Bernardino County are built in part along and across public highways. The cost of the entire system to date has been some three million dollars, whereof between four and five hundred thousand dollars have been spent in the county of San Bernardino, outside of incorporated cities and towns.

On the 29th day of March, 1913, the Southern California Edison Company filed with this Commission an affidavit of Horace S. Williamson, an employee of the company, alleging in effect, that The Southern Sierras Power Company had commenced the construction of an electric transmission line along Highland avenue, outside the corporate limits of the city of San Bernardino, toward the property of the Lytle Creek Water and Improvement Company. The affidavit alleged on information that it was the intention of The Southern Sierras Power Company to complete this line to said property, a distance of some six miles. The affidavit further alleged that the Lytle Creek Water and Improvement Company has heretofore been served and was at the date of the affidavit being served by the Southern California Edison Company, and that said extension was an extension into territory not theretofore served by The Southern Sierras Power Company. The affidavit further alleged that The Southern California Edison Company was supplying the Lytle Creek Water and Improvement Company under contract which was to expire on April 11, 1913, and it appears from other evidence in this proceeding that The Southern Sierras Power Company had entered into a contract with the Lytle Creek Water and Improvement Company to serve that company at a reduced rate after the expiration of the Southern California Edison Company's contract on April 11, 1913. This Commission thereupon telegraphed The Southern Sierras Power Company that the affidavit had been filed and that if the facts as stated were true, the company could not continue its extension without having first secured the consent of this Commission, under the provisions of section 50 of the Public Utilities Act. The Southern Sierras Power Company ceased its construction work on the Lytle Creek Water and Improvement Company line and filed with this Commission the application in the present proceeding. As heretofore stated, the application prays that this Commission determine whether or not it will be necessary to secure a certificate of public convenience and necessity or a permit for the completion of the work, and if so, that this Commission make its order permitting the prosecution of the work.



A determination of the issues in this proceeding depends upon a proper interpretation of the provisions of section 50 of the Public Utilities Act, subsections (a) and (b) whereof read as follows:

"Sec. 50. (a) No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant or system, or of any extension of such street railroad, or line, plant, or system, without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; *provided*, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county or city or town, contiguous to its street railroad, or line, plant or system, not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; *and provided, further*, that if any public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility, already constructed, the Commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants or systems affected as to it may seem just and reasonable.

(b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege; *provided*, that when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; *and provided, further*, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state."

The Southern Sierras Power Company relies on an alleged franchise from the county of San Bernardino, assigned to it prior to March 23, 1912, and claims that under said franchise the company has contract rights now beyond the power of the State of California. and, also, that the provisions of section 50 of the Public Utilities Act do not apply to its condition.

The Southern California Edison Company intervened in the proceedings, and claims that the franchise on which The Southern Sierras Power Company relies is void, and that whether it is void or not, it is necessary for applicant to secure a certificate of public convenience and necessity, under the provisions of section 50 (a) of the Public Utilities Act.

The franchise on which the applicant relies was granted by the board of supervisors of San Bernardino County to F. W. Worthley, by Ordinance No. 146, which was adopted on the 24th day of July, 1911. This ordinance became effective on August 14, 1911. On September 5, 1911, Worthley filed with the board of supervisors his acceptance of the terms of said ordinance. On September 1, 1911, Worthley assigned his rights under said ordinance to The Southern Sierras Power Company, which assignment was filed in the office of the board of supervisors on September 5, 1911. The ordinance grants to Worthley, his successors and assigns, the right to erect, construct, operate and maintain for a period of fifty years, an electric, pole-tower and wire system, consisting of poles, towers, wires and all other apparatus and appliances necessary or convenient for transmitting electricity, electrical energy, light, heat and power, over, along and upon all of the public roads and highways in San Bernardino County, outside of incorporated cities and towns, for light, heat and power purposes, and for any other purpose to which electricity may be applied, together with the right to furnish, distribute and sell electrical energy for light, heat and power, and for any other purpose to which electricity may be applied, and to collect rents, tolls and charges for such electrical energy so supplied. The grant was made on the express condition that a sum not less than ten thousand dollars should be expended within one year after the award of the franchise. The ordinance provided that work should commence in San Bernardino County within not more than four months from the date of the granting of the franchise and that the work should be completed within not more than three years thereafter, and that the franchise should be forfeited if the work was not commenced and completed as specified. The ordinance provided for a payment after the first five years to the county of San Bernardino of two per cent of the gross annual receipts and contained other provisions which it is not necessary to recite in this connection.

It was stipulated at the hearing that construction work in excess of ten thousand dollars was performed under this franchise prior to March 23, 1912, being the effective date of the Public Utilities Act.

The Southern California Edison Company points to that portion of the franchise which grants the right to construct "over, along and upon all of the public roads and highways" in San Bernardino County, outside of incorporated cities and towns. The company contends that it will manifestly be impossible to construct pole lines over, along and upon all of such public roads within the three year period, and contends that under the forfeiture clause, the entire franchise will at the expiration of said three years be declared void. In this connection the company relies on the case of *Los Angeles Railway Co. vs. City of Los Angeles*, 152, Cal. 242, and *Kaiser Land and Fruit Co. vs. Curry*, 155 Cal. 638, and the cases therein cited.

Even if the company were correct in its contention, as to which it is unnecessary to pass judgment in this proceeding, and even if it were possible to declare the franchise forfeited now because of the improbability of being able to comply with its alleged requirements within the three year period, such action, if taken at all, must be taken by the courts and not by this Commission. Until the courts have passed upon this matter the Commission will act on the supposition that the franchise is valid.

The Southern Sierras Power Company claims that under said franchise a contract right has arisen in its favor with the result that the State of California cannot confer upon this Commission the right to take jurisdiction and to determine such rules and regulations as it may desire to prescribe, under the police power, with reference to the exercise and enjoyment of the rights under the franchise. That this position is not well taken appears clearly from the case of *Home Telephone and Telegraph Co. vs. Los Angeles*, 211 U. S. 265, in which case a similar claim was made by the Home Telephone and Telegraph Company with reference to an ordinance of the city of Los Angeles prescribing the maximum rate to be collected by said company for telephone service. The franchise which the telephone company had theretofore secured from the city of Los Angeles prescribed a higher maximum rate, and the telephone company contended that this franchise constituted a contract which was not subject to regulation thereafter by public authority. The franchise in that case was granted under the provisions of the act of March 11, 1901, which, in so far as affects the present proceeding, is practically the same as the act of March 22, 1905, commonly known as the Broughton Act, under which the applicant's franchise was granted by the county of San Bernardino. Referring to the surrender by contract of the powers of government, the Supreme Court, in the

*Home Telephone* case at page 273 of the Reporter uses the following language:

“The surrender, by contract, of a power of government, though in certain well defined cases it may be made by legislative authority, is a very grave act and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legislature (in this case, the legislature of the state) has the authority to make such a surrender, unless the authority is clearly delegated to it by the supreme legislature. The general powers of a municipality or of any other political subdivision of the state are not sufficient. Specific authority for that purpose is required. This proposition is sustained by all the decisions of this court, which will be referred to hereafter, and we need not delay further upon this point.”

Continuing on the same page, the court says:

“For the very reason that such a contract has the effect of extinguishing *pro tanto* an undoubted power of government, both its existence and the power to make it, must clearly and unmistakably appear, and all doubts must be resolved in favor of the continuance of the power.”

The court concludes this branch of the case with the following language, which is to be found on page 277 of the Reporter:

“All these cases agree that the legislative authority to the municipality to make the contract must clearly and unmistakably appear. It does not so appear in the case at bar. The appellant has failed to show that the city had legislative authority to make a contract of exemption from the exercise of the power of regulation conferred in the charter. It therefore becomes unnecessary to consider whether such contract in fact was made. The appellant’s contention, that there was a violation of the obligation of its contract, must therefore be denied.”

This decision of the highest court in the land conclusively establishes the right of the State of California, under the conditions herein appearing, to provide that the Railroad Commission shall have the right, after hearing, to establish rules and regulations affecting the exercise by public utilities of rights under franchises theretofore granted. It becomes unnecessary in this proceeding to express an opinion as to whether, if a contract had arisen, the contract could stand as against the police power of the State. It becomes unnecessary, furthermore, to decide whether or not the Commission would have the right to refuse to a utility the right to proceed under a franchise granted prior to March 23, 1912. The question at issue here, as will hereinafter appear, is whether it is necessary for the applicant to apply to this Commission for its finding under the proviso in section 50(b) of the Public Utilities Act, and for the establishment of such rules and regulations, if any, as

the Commission may deem necessary in the exercise of the State's police power for the exercise of the rights and privileges granted by the franchise here under consideration.

The Southern California Edison Company claims that even if it is not necessary, under the provisions of section 50(b) of the Public Utilities Act, to make application to this Commission for a certificate of public convenience and necessity to exercise the franchise rights heretofore granted to applicant or for a permit, after a hearing, prescribing the rules and regulations under which applicant may proceed, nevertheless, it is necessary, under the provisions of section 50(a), to secure a certificate of public convenience and necessity to authorize applicant to construct the extension contemplated. The Southern California Edison Company is correct in its contention that section 50(a) refers to certificates of public convenience and necessity for the purpose of actual construction work and that section 50(b) refers to certificates of public convenience and necessity and to permits for the exercise of franchise rights and privileges. This distinction should be clearly noted. It may well be that construction may be made in cases in which no franchise or permit is necessary from any public authority. In that event, section 50(a) clearly applies. On the other hand, it is just as necessary to scan closely the provisions of franchises and permits and to have this Commission pass thereon. For that reason, section 50 (c) was inserted. I am of the opinion, however, that the main contention of the Southern California Edison Company in this connection is not correct. The construction work concerning which the Southern California Edison Company complains is construction work which is being done under an alleged franchise or permit. If it is not necessary to secure this Commission's authority to exercise the rights granted by such franchise or permit, what reason can there be for securing a certificate of public convenience and necessity to do the very acts which the franchise or permit authorizes? If the law, in effect, gives to a utility the right to go ahead under a franchise or permit without securing this Commission's consent, it certainly does not intend to make it necessary for the utility nevertheless to secure the Commission's consent to do the very thing which is already authorized by the franchise or permit.

I come now to the most important question in this proceeding, which is, whether or not section 50(b) or any portion thereof is applicable to the facts now under consideration. The determination of this question will depend upon a proper interpretation of the words "not heretofore actually exercised," which are found twice in subsection (b).

The attorneys both for the applicant and for the intervenor contend that applicant actually did exercise its franchise prior to March 23, 1912, and that consequently the entire subsection does not apply to

applicant. The attorneys for both sides contend, in effect, that the construction work which applicant did prior to March 23, 1912, before it served a single customer, amounts to an actual exercise of the franchise, as those words are used in subsection (b).

Applying subsection (b) to the facts of this proceeding, it will read about as follows:

"No electrical corporation shall henceforth exercise any right or privilege under any franchise or permit heretofore granted but not heretofore actually exercised without having first obtained from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege; provided, that if the Commission shall find, after hearing, that such electrical corporation has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such electrical corporation may proceed under such rules and regulations as the Commission may prescribe, to the completion of such work, and may after such completion, exercise such right or privilege."

The attorneys in this proceeding contend that the performance under a franchise of any of the work thereby authorized amounts to the "actual exercise" thereof, as those words are used in this connection. If this contention is correct, the proviso in section 50 (b) would read in part as follows:

"When the Commission shall find, after hearing, that a public utility *has heretofore begun actual construction work . . . . .* under any franchise or permit heretofore granted but *under which no construction work has been performed,*"

the public utility may proceed as therein provided. The statement of this proposition is its own refutation. It is impossible for the Commission to find that a public utility has begun actual construction work under a franchise under which it has not begun actual construction work. It is evident either that the suggested interpretation is incorrect or that the legislature has meant to enact a provision which is impossible.

It seems clear from the other provisions of the section that the words "actually exercised" mean "completely exercised." That this is the proper interpretation seems to follow from the provisions of section 50(b), providing that in the cases specified in the proviso the utility may proceed, under such rules and regulations as the Commission may prescribe, to the *completion* of such work and may, after such *completion*, exercise such right or privilege. If it had been intended that the proviso should apply only to a case in which nothing had been done under the franchise, the section would not have provided that a public

utility may proceed to the *completion* of the work, but rather that the public utility might, under such circumstances, *enter upon* said work and thereafter complete the same. The use of the word "completion" implies that something has been started but has not been finished. What the legislature said, under what seems to me to be a proper interpretation, is that if a utility had begun actual construction work under a franchise or permit under which its work had been partially completed, it might proceed under such rules and regulations as the Commission might prescribe, to the *completion* or the *complete exercise* of the rights which had been granted.

Applicant also contended that the franchise was "actually exercised" when it no longer was possible to forfeit the same because of failure to perform conditions subsequent. In other words, it was contended that in this case the franchise was "actually exercised" at the moment when the ten thousand dollars had been expended within the county of San Bernardino prior to the expiration of the four months' period. If the "actual exercise" of a franchise means the performance of the conditions subsequent, I do not understand why it is not necessary to look to the other conditions subsequent in the franchise, including the conditions that the work must be entirely completed within three years, and to say that the franchise is not "actually exercised" until the work shall have been entirely completed within the three years. I am of the opinion that the compliance with these conditions can not be what is meant by the "actual exercise" of the franchise. Those words either mean that *some* right granted by the franchise be exercised in whole or in part or that all the rights have been exercised. I find no reason for holding that they apply to some halfway period between the first exercise of a right and the complete exercise of the rights granted.

I find on the facts developed in this proceeding, that the Southern Sierras Power Company comes within the provisions of the proviso of section 50(b) in so far as affects the exercise of its franchise rights in the county of San Bernardino, outside of incorporated cities and towns. At the hearing, evidence was introduced with reference to the beginning and prosecution of construction work by the applicant in said county. I find from the evidence that The Southern Sierras Power Company, prior to March 23, 1912, began actual construction work in said county under said franchise, and that thereafter it prosecuted its said work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of its undertaking under said franchise, but that said company had not prior to March 23, 1912, actually exercised its rights under said franchise under the provisions of section 50(b) of the Public Utilities Act. Section 50(b) of the Public Utilities Act gives to The Southern Sierras Power Company, after a hearing before this Commission, the right to proceed to the completion of its work, under such

rules and regulations as the Commission may prescribe. These rules and regulations will hereafter from time to time be prescribed as occasion therefor demands.

I submit herewith the following form of order:

**ORDER.**

The Southern Sierras Power Company having filed with this Commission its application for a determination of the question whether or not it is necessary to secure from this Commission a certificate of public convenience and necessity or a permit for the continuance of its construction work in the county of San Bernardino, outside of incorporated cities and towns, and, in case such certificate or permit be necessary, for an order authorizing the company to proceed with the said construction work, and Southern California Edison Company having appeared in opposition to said application, and a public hearing having been held on said application,

The Railroad Commission hereby finds that the Southern Sierras Power Company, a public utility, prior to the 23d day of March, 1912, began actual construction work in the county of San Bernardino, and subsequently thereto has prosecuted such work in good faith uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under a franchise theretofore granted to F. W. Worthley by the board of supervisors of said San Bernardino County by Ordinance No. 146, and thereafter by him assigned to The Southern Sierras Power Company, and that said franchise was not prior to March 23, 1912, actually exercised by said company.

Basing its order on the foregoing findings of fact and on the further findings contained in the opinion which precedes this order,

*It is hereby ordered* that the Southern Sierras Power Company is hereby permitted to proceed to the completion of its work anywhere in said San Bernardino County to the extent permitted by said franchise, subject to such rules and regulations as this Commission may from time to time prescribe.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of April, 1913.



Decision No. 583, grade crossing: not printed. See end of volume.

DECISION No. 584.

JAMES P. GLASS

*vs.*

DEL MAR WATER, LIGHT AND POWER COMPANY.

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Case No. 326.

*Decided April 18, 1913.*

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*George H. Woodruff*, for Complainant.

*Edward Kuster*, for Defendant.

REPORT OF THE COMMISSION.

ORDER DENYING APPLICATION FOR REHEARING AND MODIFYING  
PREVIOUS ORDER.

The defendant in the case entitled as above having filed with the Commission its application for a rehearing in said case, and due consideration having been given thereto, and no good cause for a rehearing appearing,

*It is hereby ordered* that said application be and the same is hereby denied.

*It is further ordered* that the effectiveness of this Commission's order dated March 17, 1913, in the case entitled as above be and the same is hereby conditioned upon the filing with this Commission by the complainant in said case of a bond in the amount of two thousand (\$2,000) dollars, satisfactory to this Commission, and conditioned upon the prompt payment by said complainant to said defendant of such amounts of money as may become due from said complainant to said defendant on account of the construction of the pipe line to be constructed by said defendant under the terms of this Commission's order.

Dated at San Francisco, California, this 18th day of April, 1913.

Decisions Nos. 585, 586, 587, 588, 589, 590, 591, 592, 593 and 594, grade crossings: not printed. See end of volume.

DECISION No. 595.

ASSOCIATED JOBBERS OF LOS ANGELES

vs.

SOUTHERN PACIFIC COMPANY.

BISHOP CHAMBER OF COMMERCE AND SAN FRANCISCO CHAMBER OF  
COMMERCE, Intervenor.

Case No. 331.

*Decided April 19, 1913.*

Class and commodity rates in effect over defendant's lines between Los Angeles and points in the Owens Valley north of Owenyo to and including Laws and south of Owenyo to and including Keeler, all in California, complained against as unjust and unreasonable; also defendant's rates on cement between Colton and the points above mentioned and Owens Valley. Evidence introduced designed to prove that the rates complained of were so excessive that commodities produced could not be shipped, that contemplated improvements which would increase the cultivated area could not be made and that settlement of the territory was retarded.

Defendant's line to Owenyo is broad gauge; from Owenyo north the line is narrow gauge. It was the admitted purpose of defendant, in the construction of this line, ultimately to standard gauge the entire line, thereby opening a new transcontinental route from Los Angeles to eastern points via Ogden. The rates in question have been based on a combination of locals. Defendant urged that the service is that of a branch line partly standard and partly narrow gauge which makes the transfer of the freight necessary from broad to narrow gauge cars for movement beyond Owenyo in either direction, that the country is sparsely settled and that the earnings on this line were so small that the reduction in rates was not justified.

*Held.* It is well established that a carrier may not justify exorbitant rates on the ground that its line in the particular territory affected by such rates does not yield it a reasonable income. (Cases cited.)

*Held.* Having in view the ultimate intention of defendant to make the line in question a part of a transcontinental system instead of a branch line to handle a nominal amount of traffic, defendant cannot expect the shippers to pay rates high enough to pay a return on capital invested in facilities beyond their requirements. (Cases cited.)

*Held.* The Commission does not look with favor upon the building of rates on combination of locals over various junction points and besides it is violative of all the theories which the carriers have advanced from time to time and which in many cases they carry into actual practice. Rates per ton per mile should ordinarily decrease as distance increases while, of course, the aggregate rate will increase. This can not be possible when rates are built up on combination of locals.

The Commission finding that complainant has amply sustained the allegations of its complaint, ordered a substantial reduction of all of the class rates and practically all of the commodity rates in question.

*Loeb & Loeb and Fred Cregson*, for Complainant.

*George D. Squires*, for Defendant.

*Wm. B. Himrod*, for Bishop Chamber of Commerce, Intervenor.

*Wm. R. Wheeler*, for San Francisco Chamber of Commerce, Intervenor.

#### REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

The complainant in this case attacks the reasonableness of the defendant's class and commodity rates between Los Angeles, California, and points in the Owens Valley north of Owenyo to and including Laws, California, and south of Owenyo to and including Keeler, California.

The rates of the defendant on cement between Colton, California, and the points above mentioned in the Owens Valley territory, are also attacked as being excessive and unreasonable, and in connection with the class and commodity rates from Los Angeles to this territory, are in violation of section 13 of the Public Utilities Act.

The Bishop Chamber of Commerce, representing the shipping public of the Owens River Valley, intervened and adopts as its own the allegations of the complainant, Associated Jobbers of Los Angeles, and also alleges that the class and commodity rates published and maintained by the defendant between Los Angeles and Imperial Valley and San Joaquin Valley points, and on cement between Colton and the Imperial and San Joaquin valleys, are unjust and discriminatory as against the Owens River Valley and in violation of section 19 of the Public Utilities Act.

In the petition of intervention filed by the San Francisco Chamber of Commerce it is alleged that class and commodity rates published and maintained by the defendant from San Francisco to points beyond Mojave are excessive and unreasonable, and the San Francisco Chamber of Commerce asks for relief similar to that sought by the complainant.

The San Francisco Chamber of Commerce also petitions that the Commission maintain the present scale of differentials on class rates as now exist at Mojave between rates from Los Angeles and from San Francisco, to establish reasonable differentials on commodity rates to Mojave between San Francisco and Los Angeles, and in making rates from Los Angeles and San Francisco to points beyond Mojave, that the differentials become less in favor of Los Angeles as the distance increases, thereby giving to San Francisco a lower rate per ton per mile because of the greater distance from San Francisco as compared with Los Angeles.

The defendant, for its answer to the complaint and the bills of inter-

vention, sets up a general denial of the allegations concerning the reasonableness of its rates.

At the hearing of the case the complainant introduced a great many exhibits and considerable testimony designed to prove that the defendant's rates complained of are excessive and unreasonable as compared with rates to other localities for similar distances.

The Bishop Chamber of Commerce introduced evidence to prove that the entire Owens River country was being retarded in development by reason of exorbitant freight rates and poor transportation facilities. The testimony was to the effect that in many cases the cost of transportation greatly exceeded the value of the commodity; also, that commodities produced could not be shipped because of excessive rates. Others testified that contemplated improvements which would increase the cultivated area could not be made because of excessive freight rates on materials necessary for such improvement, which rendered the final cost beyond the reach of most of the inhabitants of the Owens River Valley. It was further testified that settlers who contemplated locating in this valley had many times declined to do so because of inadequate transportation facilities and excessive rates to market points for their products, and it is urged that the carrier in maintaining this high schedule of rates prevents the movement of traffic and thus impairs its own revenue.

The intervenor, San Francisco Chamber of Commerce, did not appear at the hearing and no decision will be rendered on its objection. Inasmuch as nothing appears in the record which would justify any change in the relationship of the rates which exist into this territory from Los Angeles and San Francisco respectively, I recommend that this relationship be not disturbed, and that the carrier at the time of filing tariffs in conformity with this opinion and order readjust its rates from San Francisco by way of Mojave to these points correspondingly. No order, however, will be made in this regard, and if this is not done and the decision is not satisfactory to the San Francisco interests, it will be necessary for them to file an independent complaint, in which event the matter can be decided.

The territory covered by this complaint is principally that section lying south of Laws, California, to Owenyo; although shippers in the vicinity of Inyo-Kern, a station about 115 miles south of Owenyo, also, gave testimony concerning their inability to develop the country under the existing freight rates. The defendant, in justification of the rates now maintained between various points in California and points on that line north of Mojave and south of Benton in California, claims that the service is that of a branch line partly standard and partly narrow gauge, which makes the transfer of the freight necessary from broad to narrow gauge cars for movement beyond Owenyo in either direction, and it is

further urged that the country is sparsely settled, and that the earnings on this line are so small that a reduction in rates is not justified.

I think it is proper to call attention to the fact that the asserted position of the carrier to earn a revenue on this branch line which will yield it a return upon the property of the branch line, is not well founded. In fact, it is well established that a carrier may not justify exorbitant rates on the ground that its line in the particular territory affected by such rates does not yield it a reasonable income.

(*Minneapolis & St. Louis Railroad Company vs. Railroad and Warehouse Commission*, 186 U. S. 254;

*St. Louis & San Francisco Railway Company vs. Gill*, 156 U. S. 648;

*Elliott on Railroads*, Vol. 2, Sec. 693.)

In fact it is no more proper for the defendant to interpose such a defense than it would be for the complainant to urge that because earnings from freight carried for the Los Angeles Aqueduct over this line have yielded to the carrier an amount of revenue almost equaling the entire cost of the line, no revenue beyond the actual cost of performing the business might thereafter be earned on this line under any circumstances.

The defendant has presented certain statistical data with reference to the earnings of part of the line comprising the through line from Mojave, California, to Hazen, Nevada. These statistics indicate rather low train mile earnings upon the narrow gauge system south of Mina. It must be remembered that the line between Hazen, Nevada, and Mina is supported by traffic to points reached by the Tonopah and Goldfield Railroad, and that the figures submitted represent but a portion of that line over which the traffic passes.

It is in evidence that the line from Mojave to Owenyo, at which point it connects with the narrow gauge line running south from Mina, is of a substantial and permanent character not required or justified for any temporary undertaking such as the hauling of aqueduct material for which it was first used. It was the admitted purpose of the defendant in the construction of this line ultimately to standard gauge the line between Mina and Owenyo, thereby opening a new transcontinental route from Los Angeles to eastern points via Ogden, and if the defendant chooses to construct an extraordinarily expensive piece of line, having in view the ultimate intention of making it a part of a transcontinental system, instead of a branch line to handle a nominal amount of traffic, it cannot expect the shippers to pay rates high enough to pay a return on capital invested in facilities beyond their requirements.

*Ames vs. Union Pacific Railroad Company*, 64 Fed. 165, 177;

*San Diego Land and Town Company vs. Jasper*, 189 U. S. 439.

The defendant maintains a most extraordinary scheme of rates from various points in California and Nevada into the Owens River country. It has been urged that the narrow gauge haul is unusually expensive and that the transfer from broad to narrow gauge cars should be considered in making rates from Los Angeles into this territory. The rates from Los Angeles, San Francisco, Stockton and Sacramento to the Owens River country have either been based on a combination of locals via Reno or Mojave, and I desire to state at this time that the Commission does not look with favor upon the building of rates on combination of locals over various junction points, and besides it is violative of all the theories which the carriers have advanced from time to time and which in many cases they carry into actual practice. A sample of this is the following rate on lumber, Los Angeles to Laws:

|                            | Rate per ton |                |
|----------------------------|--------------|----------------|
| Los Angeles to Mojave----- | \$3 50       | Commodity rate |
| Mojave to Owenyo-----      | 6 40         | Class "B" rate |
| Owenyo to Laws-----        | 3 60         | Class "B" rate |
| Through rate -----         | \$13 50      |                |

A more iniquitous system of rate making would be hard to imagine.

As has been well stated by the Interstate Commerce Commission, the rates per ton per mile should ordinarily decrease as distance increases, while, of course, the aggregate rate will increase. This can not be possible when rates are built up on combination of locals. In this case the rates per ton per mile decrease to the junction point and at this point commence to increase per ton per mile instead of being extended on what has been termed a normal grade. Again, the carriers have urged that the terminal expenses are extremely heavy, particularly on less than carload freight, and should be considered in the making of rates; but we must point out here that in making rates which are based on three combinations, as we find in many cases the rates to the Owens River Valley are constructed, the carrier has injected into this rate six terminal charges where but two should be considered. In other words, each local rate from and to a junction point includes its terminal charges and if the carrier does not perform all of the terminal services at these basing points they certainly have no right to claim such an allowance.

The defendant names a rate of \$2.24½ first-class from Los Angeles to Laws, a distance of 298.3 miles. This movement carries the freight over the line from Los Angeles to Mojave, which is supported by a great volume of traffic, thence over the newly constructed line from Mojave to Owenyo, where it is transferred to the narrow gauge line and hauled about 54 miles on narrow gauge trains. It is in evidence that this transfer is made at a very small expense per ton. Freight covered by these rates the defendant voluntarily hauls the same distance south from Reno

or Hazen for \$1.58 per hundred pounds, first-class. The narrow gauge haul is 90 miles, the same transfer is necessary from broad to narrow gauge cars, and it certainly can not be maintained that there is the same volume of traffic supporting the line south from Hazen as supports that portion of the line north from Los Angeles to Mojave. Mojave is 101 miles from Los Angeles and the defendant in this case certainly can not expect to receive more revenue for its line north of Mojave for freight destined to the Owens River Valley than it would receive for the same distance south of a point in Nevada 101 miles from Hazen. If, therefore, the defendant receives as class rates its full local from Los Angeles to Mojave and in addition thereto receives the same amount for the additional haul Mojave to destination that it would receive for the same distance south of a 101 mile point in Nevada, in my judgment it secures all that it can consistently ask under its own basis of rate making.

In consideration of all of the evidence in this case, I am of the opinion that the territory served by the line from Mojave to Benton, in California, otherwise known as the Oweyno line, has been seriously retarded in its development by excessive freight rates, and that complainant has amply sustained the allegations of its complaint. I believe that justice to the residents of this section requires substantial reduction in these rates as well as improvement in the service, and it is regretted that the carrier did not voluntarily accord the very necessary relief without waiting for the Commission to be appealed to. If it were a narrow or doubtful case the carrier, of course, would be justified in requiring a determination by public authority, but the case is so plain and the need of relief so evident that I do not see how the carrier justifies its failure voluntarily to have accorded the same. I believe all of the class rates and practically all of the commodity rates into this territory are too high and should be reduced.

I recommend the following order:

**ORDER.**

Associated jobbers of Los Angeles having filed its complaint against the defendant herein, and the Bishop Chamber of Commerce and the San Francisco Chamber of Commerce having asked and been granted leave to intervene, and the defendant having answered said complaint, and a hearing having been held, and being fully apprised in the premises, the Commission hereby finds as a fact

1. That all of the class rates between Los Angeles and points on the so-called Owenyo branch of the Southern Pacific Company north of Mojave to and including Benton, California, are unjust and unreasonable rates.

2. That the rates now applying on all commodities for which rates are prescribed in Schedule 2 hereinafter referred to, to be charged in the future, are unjust and unreasonable rates.

3. That the rate on cement between Colton and points on the Owenyo line of the Southern Pacific Company north of Mojave to and including Benton, California, are unjust and unreasonable.

4. That all of the class and commodity rates set out in Schedules 1 and 2 attached hereto and made a part hereof, are just and reasonable rates to be charged by the defendant, Southern Pacific Company, for the transportation of traffic to which the same apply between the points set out in said Schedules 1 and 2.

And basing its order upon the above findings of fact and the further findings of fact in the opinion hereto,

*It is hereby ordered* that the schedules of class and commodity rates attached hereto and marked respectively Schedules 1 and 2, are hereby approved and established as just and reasonable rates to be charged by the Southern Pacific Company upon all intrastate traffic moving between the points set out in said Schedules 1 and 2 respectively, said rates set out in said schedules to become effective twenty (20) days from the date hereof, and before such time the Southern Pacific Company is ordered to print, file and publish, in accordance with the rules of this Commission, tariffs setting out the rates herein established.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of April, 1913.



## SCHEDULE 1. CLASS RATES.

| Between<br>LOS ANGELES, CALIFORNIA,<br>and | Class rates in cents per 100 pounds. |     |     |    |    |    |    |    |    |    |
|--|--------------------------------------|-----|-----|----|----|----|----|----|----|----|
|  | 1                                    | 2   | 3   | 4  | 5  | A  | B  | O  | D  | E  |
| Chaffee, Cal. ....                         | 55                                   | 47  | 40  | 37 | 32 | 32 | 22 | 17 | 14 | 11 |
| Cambio, Cal. ....                          | 55                                   | 47  | 40  | 37 | 32 | 32 | 22 | 17 | 14 | 11 |
| Trescave, Cal. ....                        | 55                                   | 47  | 40  | 37 | 32 | 32 | 22 | 17 | 14 | 11 |
| Neuralia, Cal. ....                        | 57                                   | 49  | 43  | 40 | 34 | 34 | 23 | 18 | 15 | 12 |
| Cinco, Cal. ....                           | 60                                   | 50  | 46  | 42 | 36 | 36 | 23 | 19 | 15 | 12 |
| Cantil, Cal. ....                          | 64                                   | 54  | 49  | 44 | 38 | 38 | 24 | 20 | 16 | 13 |
| Gypsite, Cal. ....                         | 68                                   | 59  | 54  | 48 | 41 | 41 | 25 | 21 | 17 | 14 |
| Ceneda, Cal. ....                          | 68                                   | 59  | 54  | 48 | 41 | 41 | 25 | 21 | 17 | 14 |
| Garlock, Cal. ....                         | 72                                   | 62  | 57  | 51 | 43 | 43 | 26 | 22 | 17 | 14 |
| Goler, Cal. ....                           | 74                                   | 64  | 58  | 52 | 45 | 45 | 27 | 22 | 18 | 15 |
| Rand, Cal. ....                            | 75                                   | 65  | 61  | 54 | 47 | 47 | 27 | 23 | 18 | 15 |
| Teagle, Cal. ....                          | 77                                   | 68  | 63  | 56 | 49 | 49 | 28 | 24 | 19 | 16 |
| Searles, Cal. ....                         | 77                                   | 68  | 63  | 56 | 49 | 49 | 28 | 24 | 19 | 16 |
| Rademacher, Cal. ....                      | 79                                   | 68  | 65  | 57 | 51 | 51 | 29 | 24 | 19 | 16 |
| Code, Cal. ....                            | 81                                   | 70  | 67  | 59 | 53 | 53 | 30 | 25 | 20 | 17 |
| Terese, Cal. ....                          | 83                                   | 72  | 68  | 61 | 53 | 53 | 31 | 26 | 20 | 17 |
| Inyo-kern, Cal. ....                       | 85                                   | 73  | 69  | 63 | 55 | 55 | 31 | 27 | 21 | 18 |
| Muerto, Cal. ....                          | 87                                   | 75  | 71  | 65 | 55 | 55 | 32 | 28 | 22 | 18 |
| Brown, Cal. ....                           | 89                                   | 77  | 73  | 66 | 55 | 55 | 33 | 28 | 22 | 19 |
| Linnie, Cal. ....                          | 91                                   | 77  | 73  | 68 | 55 | 55 | 34 | 29 | 23 | 20 |
| Narka, Cal. ....                           | 93                                   | 79  | 75  | 70 | 56 | 56 | 35 | 30 | 23 | 20 |
| Little Lake, Cal. ....                     | 93                                   | 79  | 75  | 70 | 56 | 56 | 35 | 30 | 23 | 20 |
| Mabel, Cal. ....                           | 95                                   | 81  | 77  | 72 | 56 | 56 | 35 | 31 | 24 | 21 |
| Lanson, Cal. ....                          | 95                                   | 81  | 77  | 72 | 56 | 56 | 35 | 31 | 24 | 21 |
| Sykes, Cal. ....                           | 96                                   | 81  | 77  | 72 | 56 | 56 | 36 | 31 | 24 | 21 |
| Talus, Cal. ....                           | 98                                   | 82  | 77  | 73 | 57 | 57 | 37 | 32 | 25 | 22 |
| Halwee, Cal. ....                          | 99                                   | 84  | 78  | 74 | 58 | 58 | 37 | 33 | 25 | 22 |
| Loco, Cal. ....                            | 101                                  | 85  | 79  | 74 | 58 | 58 | 38 | 33 | 26 | 23 |
| Olancho, Cal. ....                         | 101                                  | 85  | 79  | 74 | 58 | 58 | 38 | 33 | 26 | 23 |
| Cartago, Cal. ....                         | 103                                  | 86  | 80  | 75 | 58 | 58 | 39 | 34 | 26 | 23 |
| Monachee, Cal. ....                        | 105                                  | 87  | 82  | 75 | 59 | 59 | 40 | 35 | 27 | 24 |
| Brier, Cal. ....                           | 106                                  | 88  | 83  | 75 | 60 | 60 | 40 | 36 | 27 | 24 |
| Carroll, Cal. ....                         | 108                                  | 90  | 84  | 75 | 60 | 60 | 41 | 37 | 28 | 25 |
| Diaz, Cal. ....                            | 111                                  | 92  | 86  | 76 | 61 | 61 | 42 | 38 | 28 | 25 |
| Lone Pine, Cal. ....                       | 113                                  | 93  | 87  | 78 | 62 | 62 | 43 | 39 | 29 | 26 |
| Owenyo, Cal. ....                          | 113                                  | 93  | 87  | 78 | 62 | 62 | 43 | 39 | 29 | 26 |
| Mount Whitney, Cal. ....                   | 114                                  | 94  | 88  | 79 | 62 | 62 | 43 | 39 | 29 | 26 |
| Avern, Cal. ....                           | 116                                  | 97  | 91  | 82 | 64 | 64 | 45 | 40 | 30 | 27 |
| Swansea, Cal. ....                         | 118                                  | 97  | 91  | 82 | 64 | 64 | 45 | 40 | 30 | 27 |
| Keeler, Cal. ....                          | 119                                  | 97  | 91  | 82 | 65 | 65 | 45 | 40 | 30 | 27 |
| Manzanar, Cal. ....                        | 114                                  | 94  | 88  | 79 | 62 | 62 | 43 | 39 | 29 | 26 |
| Citrus, Cal. ....                          | 116                                  | 96  | 90  | 81 | 63 | 63 | 44 | 40 | 30 | 27 |
| Aberdeen, Cal. ....                        | 120                                  | 98  | 92  | 83 | 65 | 65 | 45 | 40 | 30 | 27 |
| Elna, Cal. ....                            | 121                                  | 99  | 93  | 84 | 66 | 66 | 45 | 41 | 31 | 28 |
| Alvord, Cal. ....                          | 123                                  | 101 | 94  | 85 | 67 | 67 | 46 | 42 | 31 | 28 |
| Black Canyon, Cal. ....                    | 124                                  | 102 | 95  | 86 | 68 | 68 | 46 | 42 | 31 | 28 |
| Bigelow, Cal. ....                         | 125                                  | 103 | 96  | 86 | 68 | 68 | 47 | 42 | 32 | 29 |
| Polita, Cal. ....                          | 125                                  | 103 | 96  | 86 | 68 | 68 | 47 | 42 | 32 | 29 |
| Laws, Cal. ....                            | 126                                  | 103 | 97  | 87 | 68 | 68 | 47 | 42 | 32 | 29 |
| Chalfant, Cal. ....                        | 128                                  | 105 | 98  | 87 | 68 | 68 | 47 | 43 | 32 | 29 |
| Shealy, Cal. ....                          | 129                                  | 106 | 99  | 87 | 68 | 68 | 48 | 43 | 32 | 29 |
| Hammill, Cal. ....                         | 130                                  | 107 | 100 | 87 | 68 | 68 | 48 | 44 | 30 | 30 |
| Benton, Cal. ....                          | 132                                  | 109 | 102 | 88 | 69 | 69 | 49 | 45 | 33 | 30 |

**SCHEDULE 2. COMMODITY RATES.**

Flour, Cereals and Cereal Products, Carloads, as described in Southern Pacific Company's Tariff C. R. C. No. 805. Minimum Weight, 30,000 Pounds.

| Between<br>LOS ANGELES, CALIFORNIA,<br>and | Rate in cents<br>per ton of<br>2,000 pounds. |
|--|--|
| Cantil, Cal. ....                          | 530  |
| Gypsite, Cal. ....                         | 575  |
| Garlock, Cal. ....                         | 600  |
| Rand, Cal. ....                            | 660  |
| Searles, Cal. ....                         | 685  |
| Inyo-kern, Cal. ....                       | 715  |
| Brown, Cal. ....                           | 715  |
| Mabel, Cal. ....                           | 730  |
| Olancha, Cal. ....                         | 755  |
| Lone Pine, Cal. ....                       | 805  |
| Owenyo, Cal. ....                          | 805  |
| Keeler, Cal. ....                          | 870  |
| Manzanar, Cal. ....                        | 830  |
| Citrus, Cal. ....                          | 845  |
| Aberdeen, Cal. ....                        | 870  |
| Elna, Cal. ....                            | 885  |
| Alvord, Cal. ....                          | 895  |
| Black Canyon, Cal. ....                    | 910  |
| Bigelow, Cal. ....                         | 910  |
| Polita, Cal. ....                          | 910  |
| Laws, Cal. ....                            | 910  |
| Chalfant, Cal. ....                        | 910  |
| Shealy, Cal. ....                          | 910  |
| Hammil, Cal. ....                          | 910  |
| Benton, Cal. ....                          | 920  |

**SCHEDULE 2. COMMODITY RATES—Continued.**

Lumber and Its Products, Carloads, as described in Southern Pacific Company's Tariff C. R. C. No. 699.

| Between<br>LOS ANGELES, CALIFORNIA,<br>and | Rate in cents<br>per ton of<br>2,000 pounds. |
|--|--|
| Cantil, Cal. ....                          | 410  |
| Gypsite, Cal. ....                         | 425  |
| Garlock, Cal. ....                         | 440  |
| Rand, Cal. ....                            | 460  |
| Searles, Cal. ....                         | 475  |
| Inyo-kern, Cal. ....                       | 495  |
| Brown, Cal. ....                           | 530  |
| Mabel, Cal. ....                           | 560  |
| Olancha, Cal. ....                         | 570  |
| Lone Pine, Cal. ....                       | 600  |
| Owenyo, Cal. ....                          | 600  |
| Keeler, Cal. ....                          | 680  |
| Manzanar, Cal. ....                        | 650  |
| Citrus, Cal. ....                          | 665  |
| Aberdeen, Cal. ....                        | 680  |
| Elna, Cal. ....                            | 680  |
| Alvord, Cal. ....                          | 695  |
| Black Canyon, Cal. ....                    | 695  |
| Bigelow, Cal. ....                         | 710  |
| Polita, Cal. ....                          | 710  |
| Laws, Cal. ....                            | 710  |
| Chalfant, Cal. ....                        | 710  |
| Shealy, Cal. ....                          | 725  |
| Hammil, Cal. ....                          | 725  |
| Benton, Cal. ....                          | 740  |

**SCHEDULE 2. COMMODITY RATES—Continued.****Potatoes and Onions, Straight or Mixed Carloads. Minimum Weight, 30,000 Pounds.**

| Between<br>LOS ANGELES, CALIFORNIA,<br>and |  | Rate in cents<br>per ton of<br>2,000 pounds. |
|--|--|--|
| Cantil, Cal. ....                          |  | 360  |
| Gypsite, Cal. ....                         |  | 380  |
| Garlock, Cal. ....                         |  | 395  |
| Rand, Cal. ....                            |  | 415  |
| Searles, Cal. ....                         |  | 430  |
| Inyo-kern, Cal. ....                       |  | 485  |
| Keeler, Cal. ....                          |  | 525  |

**SCHEDULE 2. COMMODITY RATES—Continued.****Grain and Grain Products, Carloads, as described in Southern Pacific Company's  
Tariff C. R. C. No. 102. Minimum Weight, 30,000 Pounds.**

| Between<br>LOS ANGELES, CALIFORNIA,<br>and |  | Rate in cents<br>per ton of<br>2,000 pounds. |
|--|--|--|
| Cantil, Cal. ....                          |  | 300  |
| Gypsite, Cal. ....                         |  | 315  |
| Garlock, Cal. ....                         |  | 330  |
| Rand, Cal. ....                            |  | 345  |
| Searles, Cal. ....                         |  | 360  |
| Inyo-kern, Cal. ....                       |  | 380  |
| Brown, Cal. ....                           |  | 390  |
| Mabel, Cal. ....                           |  | 405  |
| Olancha, Cal. ....                         |  | 430  |
| Lone Pine, Cal. ....                       |  | 470  |
| Owenyo, Cal. ....                          |  | 470  |
| Keeler, Cal. ....                          |  | 505  |
| Manzanar, Cal. ....                        |  | 495  |

**SCHEDULE 2. COMMODITY RATES—Continued.**  
**Cement, Carloads. Minimum Weight, 50,000 Pounds.**

| Between<br>COLTON, CALIFORNIA,<br>and | Rate in cents<br>per ton of<br>2,000 pounds. |
|---------------------------------------|--|
| Cantil, Cal. ....                     | 360  |
| Gypsite, Cal. ....                    | 380  |
| Garlock, Cal. ....                    | 395  |
| Rand, Cal. ....                       | 415  |
| Searles, Cal. ....                    | 430  |
| Inyo-kern, Cal. ....                  | 460  |
| Brown, Cal. ....                      | 475  |
| Mabel, Cal. ....                      | 495  |
| Olancha, Cal. ....                    | 500  |
| Lone Pine, Cal. ....                  | 500  |
| Owenyo, Cal. ....                     | 500  |
| Keeler, Cal. ....                     | 525  |
| Manzanar, Cal. ....                   | 525  |
| Citrus, Cal. ....                     | 525  |
| Aberdeen, Cal. ....                   | 525  |
| Elna, Cal. ....                       | 525  |
| Alvord, Cal. ....                     | 525  |
| Black Canyon, Cal. ....               | 525  |
| Bigelow, Cal. ....                    | 525  |
| Polita, Cal. ....                     | 525  |
| Laws, Cal. ....                       | 525  |
| Chalfant, Cal. ....                   | 525  |
| Shealy, Cal. ....                     | 525  |
| Hammil, Cal. ....                     | 525  |
| Benton, Cal. ....                     | 525  |

**SCHEDULE 2. COMMODITY RATES—Continued.**  
**Apples, Fresh, Carloads. Minimum Weight, 24,000 Pounds.**

| Between<br>LOS ANGELES, CALIFORNIA,<br>and | Rate in cents<br>per ton of<br>2,000 pounds. |
|--|--|
| Cantil, Cal. ....                          | 360  |
| Gypsite, Cal. ....                         | 360  |
| Garlock, Cal. ....                         | 375  |
| Rand, Cal. ....                            | 390  |
| Searles, Cal. ....                         | 410  |
| Inyo-kern, Cal. ....                       | 430  |
| Brown, Cal. ....                           | 450  |
| Mabel, Cal. ....                           | 465  |
| Olancha, Cal. ....                         | 495  |
| Lone Pine, Cal. ....                       | 545  |
| Owenyo, Cal. ....                          | 545  |
| Keeler, Cal. ....                          | 585  |
| Manzanar, Cal. ....                        | 570  |
| Citrus, Cal. ....                          | 585  |
| Aberdeen, Cal. ....                        | 585  |
| Elna, Cal. ....                            | 600  |
| Alvord, Cal. ....                          | 615  |
| Black Canyon, Cal. ....                    | 615  |
| Bigelow, Cal. ....                         | 615  |
| Polita, Cal. ....                          | 615  |
| Laws, Cal. ....                            | 615  |
| Chalfant, Cal. ....                        | 625  |
| Shealy, Cal. ....                          | 625  |
| Hammil, Cal. ....                          | 640  |
| Benton, Cal. ....                          | 655  |

**SCHEDULE 2. COMMODITY RATES—Continued.****Live stock, Carloads.**

| Between<br>LOS ANGELES, CALIFORNIA,<br>and | Horses,<br>mules.                           | Cattle. | Sheep,<br>hogs,<br>goats. |
|--|---|---------|---------------------------|
|  | Rates in dollars and cents per 30-foot car. |         |                           |
| Cantil, Cal. ....                          | 46 00                                       | 36 00   | 27 00                     |
| Gypsite, Cal. ....                         | 47 00                                       | 37 00   | 28 00                     |
| Garlock, Cal. ....                         | 49 00                                       | 39 00   | 29 50                     |
| Rand, Cal. ....                            | 50 00                                       | 40 00   | 30 00                     |
| Searles, Cal. ....                         | 51 00                                       | 41 00   | 31 00                     |
| Inyo-kern, Cal. ....                       | 55 00                                       | 45 00   | 34 00                     |
| Brown, Cal. ....                           | 57 00                                       | 47 00   | 35 50                     |
| Mabel, Cal. ....                           | 60 00                                       | 50 00   | 37 50                     |
| Olancha, Cal. ....                         | 64 00                                       | 54 00   | 40 50                     |
| Lone Pine, Cal. ....                       | 70 00                                       | 60 00   | 45 00                     |
| Owenyo, Cal. ....                          | 70 00                                       | 60 00   | 45 00                     |
| Keeler, Cal. ....                          | 74 00                                       | 64 00   | 48 00                     |
| Manzanar, Cal. ....                        | 71 00                                       | 61 00   | 46 00                     |
| Citrus, Cal. ....                          | 72 00                                       | 62 00   | 46 50                     |
| Aberdeen, Cal. ....                        | 75 00                                       | 65 00   | 49 00                     |
| Elna, Cal. ....                            | 76 00                                       | 66 00   | 49 50                     |
| Alvord, Cal. ....                          | 78 00                                       | 68 00   | 51 00                     |
| Black Canyon, Cal. ....                    | 79 00                                       | 69 00   | 52 00                     |
| Bigelow, Cal. ....                         | 80 00                                       | 70 00   | 52 50                     |
| Polita, Cal. ....                          | 80 00                                       | 70 00   | 52 50                     |
| Laws, Cal. ....                            | 81 00                                       | 71 00   | 53 50                     |
| Chalfant, Cal. ....                        | 81 50                                       | 71 50   | 53 50                     |
| Shealy, Cal. ....                          | 82 50                                       | 72 50   | 54 50                     |
| Hammil, Cal. ....                          | 83 00                                       | 73 00   | 55 00                     |
| Benton, Cal. ....                          | 84 00                                       | 74 00   | 56 00                     |

**SCHEDULE 2. COMMODITY RATES—Continued.****Oils: Petroleum Crude Oil; Petroleum Gas Oil; Petroleum Road Oil; Petroleum Stove Oil; Petroleum Oil Residuum; also Fuel Oil, viz.; Refinery Residuum, Carloads.**

| From<br>BAKERSFIELD, CALIFORNIA,<br>to | Rate in cents<br>per ton of<br>2,000 pounds. |
|--|--|
| Cantil, Cal. ....                      | 265  |
| Gypsite, Cal. ....                     | 270  |
| Garlock, Cal. ....                     | 280  |
| Rand, Cal. ....                        | 290  |
| Searles, Cal. ....                     | 300  |
| Inyo-kern, Cal. ....                   | 320  |
| Brown, Cal. ....                       | 330  |
| Mabel, Cal. ....                       | 345  |
| Olancha, Cal. ....                     | 365  |
| Lone Pine, Cal. ....                   | 395  |
| Owenyo, Cal. ....                      | 400  |
| Keeler, Cal. ....                      | 475  |
| Manzanar, Cal. ....                    | 450  |
| Citrus, Cal. ....                      | 460  |
| Aberdeen, Cal. ....                    | 475  |
| Elna, Cal. ....                        | 485  |
| Alvord, Cal. ....                      | 490  |
| Black Canyon, Cal. ....                | 500  |
| Bigelow, Cal. ....                     | 505  |
| Polita, Cal. ....                      | 505  |
| Laws, Cal. ....                        | 510  |
| Chalfant, Cal. ....                    | 520  |
| Shealy, Cal. ....                      | 530  |
| Hammil, Cal. ....                      | 535  |
| Benton, Cal. ....                      | 550  |

**SCHEDULE 2. COMMODITY RATES—Continued.****Honey, Strained, in Boxes, Barrels, Kegs or Casks, Carloads. Minimum Weight, 30,000 Pounds.**

| From—                                   | To—         | Rate in cents per 100 pounds. |
|---|-------------|-------------------------------|
| Keeler, Benton, and points between..... | Los Angeles | 45                            |

**Honey (Comb), in Packages, Carloads. Minimum Carload Weight, 20,000 Pounds.**

|   |             |    |
|---|-------------|----|
| Keeler, Benton, and points between..... | Los Angeles | 65 |
|---|-------------|----|

**SCHEDULE 2. COMMODITY RATES—Continued.****Salt. Minimum Carload Weight, 60,000 Pounds.**

|   |             |    |
|---|-------------|----|
| Keeler, Benton, and points between..... | Los Angeles | 25 |
|---|-------------|----|

**SCHEDULE 2. COMMODITY RATES—Continued.****Seed, Alfalfa, Carloads. Minimum Carload Weight, 30,000 Pounds.**

|   |             |    |
|---|-------------|----|
| Keeler, Benton, and points between..... | Los Angeles | 45 |
|---|-------------|----|

**DECISION No. 596.**

**IN THE MATTER OF THE APPLICATION OF VARIOUS PUBLIC UTILITIES FOR PERMISSION TO CHARGE LESS THAN PUBLISHED SCHEDULES OF RATES IN CERTAIN CLASSES OF CASES.**

**Case No. 293.*****Decided April 19, 1913.******E. S. Pillsbury*, for The Pacific Telephone and Telegraph Company.*****Guy C. Earl*, for Great Western Power Company and City Electric Company.*****H. H. Trowbridge*, for Southern California Edison Company.****REPORT OF THE COMMISSION.****SUPPLEMENTAL OPINION.**

**This case was decided January 24, 1913, and reference should be had to the decision for the facts involved.**

**The second subsection of the order reads as follows:**

**“Within three months from the date of this order all public utilities desiring to continue concessions established by contracts heretofore entered into and not coming under the provisions of**

paragraph (1) of this order, shall file with this Commission correct copies of such contracts as they may desire to continue, with such explanations, if any, as may show to the Commission clearly the situation with reference to such contracts, whereupon the Commission will decide whether or not it will permit such contracts to stand during their term. In all cases in which utilities do not file contracts within the time herein specified, it shall be unlawful thereafter to charge any rate other than the rate specified in the schedules on file with this Commission as applicable to the class of service specified in the contract; provided, that where a utility had a rate of general application to some class of consumers in effect on October 10, 1911, and also a "standard" rate which is higher than such rate, the lower rate in effect on October 10, 1911, shall continue in effect as to the customers who enjoyed such rate until the Commission, on application therefor, authorizes a change. This paragraph applies to all public utilities other than common carriers, whether they have hitherto filed applications with this Commission or not."

The language in the proviso was inserted for the specific purpose of preventing utilities when discrimination appeared from removing this discrimination by increasing the lower rate so as to make it the same as the higher rate, irrespective of the question whether fairness demands the reduction of the higher rate or the increase of the lower rate. At times, it may be more reasonable to require the removal of discrimination by reducing the higher rate to the level of the lower. There are many cases wherein even an individual rate may constitute the proper charge for a class of service. An individual consumer may constitute a class because no other consumer is in a similar situation with reference to the utility in question. Such being the case, and the attention of the Commission having been called to the probability that under the authority of this order some of the utilities will seek to raise a great many rates and thus eliminate discrimination which could and should be eliminated by decreasing the rates, we have found it necessary to adopt the following supplemental order:

**ORDER.**

The foregoing case having heretofore been heard and a decision and order rendered on the 24th day of January, 1913, and it appearing to the Commission that a possible construction of said order may empower the utilities to make substantial increases in their rates without justification; and it further appearing to the Commission that where discrimination exists and there are two methods of removing the discrimination, one by the raising of the rates and the other by the lowering of the rates, the Commission should determine which method should be pursued in each particular case in justice to the utility and the consumers involved.

*It is hereby ordered* that in compliance with the order heretofore rendered, the utilities involved shall file all of their deviations and indicate those which it is their desire to continue and the reasons therefor, and shall retain in effect both such deviations desired to be retained and the deviations which such utilities desire to eliminate, pending the determination by this Commission in each particular case as to the method of removing such discrimination. Where such rates have been established by contract, copies of the contracts shall be filed. Where such rates have heretofore been filed, reference to the date and the occasion of the filing may be made without again filing the same. In compliance with this and the previous order herein,

*It is further ordered* that all utilities retain in effect all of those rates, tolls, rentals or charges which were being actually charged on the tenth day of October, 1911, until the Commission shall authorize a change therefrom.

This order, however, is not to affect changes that have heretofore been authorized in specific cases by this Commission or discriminations which have heretofore been removed by utilities under the Public Utilities Act and the orders of this Commission or other competent legal authority.

The information to be filed under the provisions of this supplemental order shall be filed on or before the nineteenth day of July, 1913.

Dated at San Francisco, California, this 19th day of April, 1913.

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DECISION No. 597.

IN THE MATTER OF THE APPLICATION OF COVINA CITY  
WATER COMPANY FOR PERMISSION TO INCREASE  
RATES.

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Application No. 417.

*Decided April 19, 1913.*

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*Gibson, Dunn & Crutcher and E. E. Bacon, for Applicant.*  
*A. M. Pence, for the City of Covina.*

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by the Covina City Water Company for permission to increase rates.

Applicant is a public utility serving water to the inhabitants of the city of Covina and its vicinity, said city being a city of the sixth class.



On the 22d day of January, 1913, at a special election held in said city, there were submitted to the electors the following propositions:

1. Shall the city of Covina retain its power of control over water corporations.

2. Shall the city of Covina retain its power of control over gas corporations.

On proposition No. 1, ballots cast were as follows: Yes, 12; No, 167.

On proposition No. 2, ballots cast were as follows: Yes, 12; No, 168.

Thereafter, the board of trustees of said city regularly declared the result to be that the city of Covina had elected not to retain its powers of control over water corporations and gas corporations.

Thereafter, this application was filed, and a doubt having arisen as to whether or not said election was valid, the matter was set down for argument.

The so-called Hewitt Act, being chapter 40, Statutes of Special Session of the Legislature of 1911, provides a scheme for presenting to the electors of any city and county, or incorporated city or town the question of the retention or relinquishment of such cities' powers over public utilities within their boundaries. The act enumerates ten propositions, each proposition naming a specific utility and putting the question as to whether or not power over such utility shall be retained. The city of Covina presented for the votes of the electors only two of the propositions out of the ten enumerated in the Hewitt Act, and the question was as to whether or not all of the propositions enumerated in that act must be submitted.

However, at the hearing held for the purpose of considering this legal question, both the city of Covina and the applicant water company took the position that the election held in said city was valid and that said company was now under the jurisdiction of the State Railroad Commission.

I recommend that this Commission do not at this time and in this proceeding pass upon the question of law involved, but that in view of the agreement of both the city and the utility company that this Commission has jurisdiction, that such jurisdiction be assumed and that the application take its regular course to a hearing on the merits.

I submit herewith the following form of order:

#### ORDER.

Application having been made by the Covina City Water Company for permission to increase rates and action by the Commission on said application having been suspended pending a hearing on the question of whether or not the city of Covina had successfully voted to relinquish its jurisdiction over such company to the Railroad Commission, and it appearing to the Commission that jurisdiction over said utility company should be assumed by this Commission,

*It is hereby ordered* that said application be entertained as regularly filed and before the Commission, and that the application take its regular course to a hearing on the merits of the matters contained therein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of April, 1913.

Decision No. 598, grade crossing: not printed. See end of volume.

DECISION No. 599.

IN THE MATTER OF THE APPLICATION OF W. W. WILCOX, DAN JOHNSTON AND O. L. EMERY FOR AN ORDER AUTHORIZING THEM TO SELL A CERTAIN WATER SYSTEM NEAR COLTON, CALIFORNIA, TO THE CLARA VISTA WATER COMPANY AND AUTHORIZING SAID CORPORATION TO PURCHASE SAID WATER SYSTEM AND TO ISSUE IN EXCHANGE THEREFOR THIRTY THOUSAND DOLLARS PAR VALUE CAPITAL STOCK AND SIXTY THOUSAND DOLLARS PAR VALUE BONDS.

Application No. 321.

*Decided April 24, 1913.*

Individual owners of a water system having incorporated the Clara Vista Water Company for the purpose of taking over and operating the system, permission is given, under section 50 of the Public Utilities Act, to the transfer and, under section 52 of said act, to the issue by the corporation in payment for the property acquired of \$30,000 capital stock and \$60,000 twenty-year 6 per cent bonds, said securities to net par.

*Arthur Wright*, for Applicants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

W. W. Wilcox, Dan Johnston and O. L. Emery each own an undivided one third interest in a water system supplying water for domestic and irrigation purposes to a small community adjacent to and just east of the city of Colton, California. This water system, at present, supplies approximately fifty domestic consumers and twenty-five irrigation consumers. The three gentlemen who now jointly hold this water system have formed the Clara Vista Water Company, incorporated in September, 1912, with an authorized capital of 300 shares of the par value of

\$30,000. This corporation has an authorized bond issue of 120, 20-year, six per cent (6%), gold bonds of the par value of \$60,000, which bonds are to be secured by a deed of trust executed substantially in accordance with the form of a deed of trust attached to the application in this proceeding and marked "Exhibit C." The present application requests, first, an order of the Commission authorizing the three individuals who now jointly own the water system which is the subject of this application to transfer the ownership of the water system to the Clara Vista Water Company, also authorizing said company to purchase this water system, and, secondly, for an order of this Commission authorizing said Clara Vista Water Company to issue all of its capital stock of the par value of \$30,000, and all of its authorized bonds of the par value of \$60,000, in exchange for the water system so received.

The property, real and personal, comprising the water system to be transferred is set forth in "Exhibit F" attached to the application in this proceeding as follows:

The west one seventh ( $\frac{1}{7}$ ) of lots ten (10) and eleven (11), in block fourteen (14) of San Bernardino Rancho and in the county of San Bernardino, State of California, as per map of the San Bernardino Rancho, as per plat recorded in Book 7 of maps at page 2, of the records of said county.

That portion of block two (2) of the Colton Terrace Citrus Tract in the county of San Bernardino, State of California, a map of which is of record in Book 1, at page 30 of maps, of the records of said county and which portion of said lot is more particularly described as follows: Beginning at a point on the north line of said block two (2) distanced one hundred eighteen (118) feet west of the northeast corner of said block two (2); thence running south thirty (30) degrees east two hundred feet (200); thence at right angles southwesterly ninety (90) feet; thence at right angles northwesterly to the north line of said block two (2); thence easterly to the point of beginning.

All franchises, rights, privileges, wells, machinery, pumping plants, engines, pumps, pipe lines, reservoirs, equipment, aqueducts, ditches, irrigation plant and system, domestic water plant and system, water and water rights, tools, fittings, implements and all other personal property of whatever kind and nature now connected with said water system and more particularly described in part as follows:

*Wells, Machinery and Equipment.*

- 1 well, diameter 20 inches, depth 400 feet.
- 1 well, diameter 15 inches, depth 500 feet.
- 1 well, diameter 12 inches, depth 96 feet.
- 1 well, diameter 12 inches, depth 665 feet.
- 1 well, diameter 12 inches, depth 700 feet.

*Pumping Plant No. 1.*

- 1 pit, 10 by 10 feet, depth 40 feet.
- 1 No. 6 centrifugal pump.
- 1 50 horsepower electric motor, complete with all necessary appliances.
- 1 building 10 by 40 feet.

*Pumping Plant No. 2.*

- 1 100 horsepower electric motor.
- 1 Ingersoll and Rand air compressor, with all necessary pipes and appliances.
- 1 building 12 by 40 feet.
- 4 room cottage.
- 25 miner's inches of water, continuous flow.
- 300 miner's inches of pumped water.

## PIPE LINES.

*Domestic System.*

- 2,900 feet steel riveted pipe, 24 inches in diameter.
- 1,600 feet steel riveted pipe, 9 inches in diameter.
- 1,320 feet steel riveted pipe, 6 inches in diameter.
- 1,000 feet steel riveted pipe, 5 inches in diameter.
- 7,500 feet steel riveted pipe, 4 inches in diameter.

*Fittings.*

- 3 9-inch hub end gate valves.
- 3 6-inch hub end gate valves.
- 1 10-inch hub end gate valve.
- 3 4-inch hub end gate valves.

*Irrigating System.*

- 3,650 feet vitrified pipe, 14 inches in diameter.
- 1,320 feet vitrified pipe, 12 inches in diameter.
- 1,100 feet vitrified pipe, 10 inches in diameter.
- 14,860 feet vitrified pipe, 6 inches in diameter.
- 1,660 feet vitrified pipe, 4 inches in diameter.

*Fittings.*

- 700 1½-inch stand pipes with valves.
- 15 6-inch hub end gate valves.
- 10 4-inch hub end gate valves.
- 1 14-inch hub end gate valve.

The Commission's engineer has made a valuation of the property comprising the water system to be transferred. The three gentlemen who now own this water system have, subsequent to the filing of this application, been making extensive improvements in the water system, which improvements are being paid for in cash. I find that the value of the physical properties to be transferred is entirely adequate to warrant the issuance by the Clara Vista Water Company of the stock and bonds herein applied for.

I, therefore, recommend that this application be granted, and submit herewith the following form of order:

## ORDER.

W. W. Wilcox, Dan Johnston and O. L. Emery having applied for an order of this Commission authorizing them to sell a certain water system near Colton to the Clara Vista Water Company, and the Clara Vista Water Company having applied for an order of this Commission authorizing it to purchase said water system and to issue in exchange therefor its capital stock of the par value of \$30,000 and bonds of the par value of \$60,000, and a public hearing having been duly held upon

this application, and the Commission finding that the purposes for which said stock and bonds herein applied for are to be used are not in whole, nor in part, reasonably chargeable to operating expenses, or to income,

*It is hereby ordered* that W. W. Wilcox, Dan Johnston and O. L. Emery be and they are hereby authorized to sell, and that Clara Vista Water Company be and it is hereby authorized to purchase all the real and personal property comprising that certain water system now owned by said individuals and situated adjacent to and just east of the city of Colton.

*It is further ordered* that Clara Vista Water Company be and it hereby is authorized to issue 300 shares of its capital stock of the par value of \$30,000 and 120 first mortgage, 20-year 6 per cent gold bonds of the par value of \$60,000, secured by a deed of trust executed substantially in the form of the deed of trust attached to the application in this proceeding and marked "Exhibit C," upon the following conditions, and not otherwise, to wit:

1. The stock and bonds herein authorized to be issued shall be issued so as to net Clara Vista Water Company the equivalent of the par value thereof.

2. The stock and bonds herein authorized to be issued shall be issued only in exchange for all the real and personal property comprising the water system adjacent to the city of Colton and now jointly owned by W. W. Wilcox, Dan Johnston and O. L. Emery. Reference is hereby made to the enumeration in the foregoing opinion of the real and personal property to be given in exchange for the stock and bonds herein authorized.

3. Applicant shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

4. The authority hereby given to issue stock and bonds shall apply only to capital stock or bonds issued by Clara Vista Water Company on or before November 1, 1913.

5. The payment of the minimum fee prescribed in section 57 of the Public Utilities Act shall be a condition precedent to the effectiveness of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of April, 1913.

## DECISION No. 600.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN  
PACIFIC COMPANY TO INCREASE PASSENGER FARE  
BETWEEN SAN FRANCISCO AND BROADWAY WHARF,  
OAKLAND.

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Application No. 252.

*Decided April 24, 1913.*

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Denial of application for a rehearing for reasons assigned.

*C. W. Durbrow*, for Southern Pacific Company.

*E. D. White* of the firm of Snook & Church, for Oakland Chamber of  
Commerce.

*A. A. Denison*, for Oakland Chamber of Commerce.

*E. A. Freeman*, for Oakland Protective League.

*Edwin Stearns* and *H. F. Seiler*, for Downtown Improvement Club.

## REPORT OF COMMISSION.

*GORDON, Commissioner.*

This is an application on the part of the Southern Pacific Company for a rehearing in Application No. 252 decided by the Commission January 10, 1913.

The Commission in its decision denied the application for permission to increase passenger fare between San Francisco and Oakland Broadway Wharf from five to ten cents via what is known as the Creek Route and the present application is for a rehearing of the matters previously decided by the Commission.

In its original application the Southern Pacific Company sought to justify the proposed increase on the grounds that it had spent large sums in electrifying the Oakland Pier Route for expeditious passenger service, and that in order to make that route more safe automobiles had been forced on to the Creek Route via which line an increased number of boats were placed in service to accommodate automobiles. It was contended that the increase of the Creek Route service from hourly to half hourly service for the accommodation of automobiles had the effect of attracting a large amount of passenger business from the Oakland Pier Route, via which line the fare is ten cents, to the Creek Route where the fare is five cents.

The application for rehearing is based primarily on the fact that the carriage of automobiles in large numbers within the enclosed portion of the Creek Route boats, which automobiles carry tanks filled with gasoline, renders it extremely hazardous to transport passengers on the

same boats, and that if the applicant were permitted to increase the fare from five to ten cents the Creek Route passengers would naturally patronize the Oakland Pier Route because of the superior service for the same money via that route, thereby reducing the number of passengers who might be on a boat in case of an accident due to explosions of gasoline carried by automobiles.

The jurisdiction of this Commission to provide against accidents on the property of public utilities does not extend to vessels plying on the navigable waters where the Federal Government has taken action in the general field. The Federal Government has enacted legislation covering the general question of safety of navigation, giving to the United States Supervising Inspectors of Hulls and Boilers the power to make all needful rules and regulations in the matter.

It is clear that the Federal Congress has power under the commerce clause to exercise authority over the navigation on all public waters of the United States; inasmuch as Congress has exercised its power by proper legislation and has prescribed rules for the safe navigation of vessels it is clearly not within the jurisdiction of this Commission to prescribe regulations for safety of water craft.

Section 4472 of the laws governing the steamboat inspection service contains the following:

“Nothing in the foregoing or following sections of this act shall prohibit the transportation by steam vessels of gasoline or any of the products of petroleum when carried by motor vehicles (commonly known as automobiles) using the same as a source of motive power.”

And further, this section says:

“*Provided, further,* that any owner, master, agent, or other person having charge of passenger steam vessels shall have the right to refuse to transport automobile vehicles the tanks of which contain gasoline, naphtha or other dangerous burning fluids.”

It will be noted from the foregoing provisions of the Federal statutes that the Federal Government in the exercise of its authority over the navigation of vessels has expressly provided that automobiles may be carried without any limitation as to the number on each vessel or in what portion of the vessel they must be loaded or stored. At the same time the Federal Government has left the door open for vessels to decline to carry automobiles the tanks of which are filled with gasoline, if they so desire.

Why, then, should the applicant apply to this Commission for permission to raise a passenger fare in order to force passengers to travel via a steamer line which does not carry automobiles when the Federal Government in the exercise of its authority over the safe navigation of vessels has specifically said that a vessel carrying passengers may

accept automobiles with tanks filled with gasoline or refuse to accept them at their pleasure?

The applicant assumes that the raising of the fare from five to ten cents via the Creek Route will force passengers to the Oakland Pier Route where no automobiles are carried, and while it is solicitous of the welfare of the foot passengers who patronize the Creek Route it does not seem at all apprehensive of the safety of the passengers accompanying automobiles or teamsters accompanying teams.

In the original hearing of this application the applicant very strongly urged that the service via both the Creek Route and the Oakland Pier Route was first class and that because of the increased number of boats now run on the Creek Route to accommodate automobiles a large number of passengers who formerly patronized the Oakland Pier Route and paid ten cents for the trip now patronized the improved Creek Route service where the fare is but five cents.

It is needless to discuss any further the matters brought out at the original hearing which were fully dealt with in our original opinion and order. The present application, as before stated, is based on a desire of the applicant to eliminate the risk of carrying passengers on the same vessel which is crowded with automobiles. In my opinion, if the applicant feels that it is operating its vessels in a manner prejudicial to public safety its duty is to call the matter to the attention of the Federal inspectors and not appeal to this Commission to raise its passenger fare. I have no doubt but that the Federal Government, through its inspectors, which has exclusive jurisdiction over the safety of the operation of the transbay ferry boats will promptly take steps to minimize any danger.

Under all the circumstances of the case I am of the opinion that the applicant should be referred to the Federal inspectors and that the application for a rehearing should be denied.

I recommend the following order:

**ORDER.**

Southern Pacific Company having filed a petition for a rehearing in Application No. 252 previously decided by this Commission and a hearing having been duly held upon said application for rehearing and it appearing to the Commission from the evidence submitted that said application for rehearing should not be granted,

*It is hereby ordered* that application of the Southern Pacific Company for rehearing in Application No. 252 be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, this 24th day of April, 1913.



## DECISION No. 601.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO  
NATURAL GAS COMPANY FOR PERMISSION TO ISSUE  
BONDS OF THE PAR VALUE OF TWO HUNDRED THOU-  
SAND DOLLARS.

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Application No. 446.*Decided April 24, 1913.*

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Application for permission to issue \$200,000 six per cent bonds at not less than 95 per cent and to use the proceeds for various corporate purposes requiring the expenditure of a sum estimated not to exceed \$180,000. Order entered approving the issue of \$13,000 of said bonds to be issued to net applicant the par value thereof, the proceeds to be expended in the construction of applicant's plant and to the issue of \$180,000 of said bonds at not less than 95 per cent of the par value, the proceeds to be used for specific purposes enumerated.

*Devlin & Devlin and Irving D. Gibson, for Applicant.*

## REPORT OF COMMISSION.

GORDON, *Commissioner.*

Sacramento Natural Gas Company in this application requests permission to issue 200 of its first mortgage 30-year 6 per cent gold bonds of the par value of \$200,000, secured by a deed of trust executed on October 2, 1911, by applicant to F. W. Kiesel and F. L. Martin, as joint trustees. Sacramento Natural Gas Company was incorporated in December, 1895, with a capital stock of the par value of \$120,000, which in May, 1903, was increased to \$500,000, consisting of 10,000 shares of the par value of \$50 a share. Applicant has issued 8,582 shares of its capital stock of the par value of \$429,100.

On October 2, 1911, applicant executed a mortgage to secure a bond issue of the par value of \$400,000, of which \$200,000 has already been issued. Applicant now applies for permission to issue the remaining \$200,000 par value of bonds.

Applicant is engaged in the development and distribution of natural gas in the city of Sacramento, Sacramento County, and in the town of Lodi, San Joaquin County, California.

The plant and equipment of applicant consists of 5.2 miles of mains in Sacramento and 2.7 miles of mains in Lodi, together with buildings, real estate, machinery, gas wells, gas holders, meters and miscellaneous equipment, aggregating an original cost to applicant as set out in the application, of \$744,486.72. From the evidence submitted by applicant at the hearing it appears that there is a considerable margin between the value of applicant's property and the face value of its issued capital stock and obligations.

Applicant now desires to make certain extensions and improvements in its plant and equipment at Sacramento. Applicant now has seven gas wells in operation at Sacramento and desires to bore one additional well in order to meet the increased demands for service. Applicant desires also to construct a new gas holder and to make considerable extensions of mains and service pipes throughout the city. Through these extensions, applicant contemplates securing approximately 900 new subscribers. Applicant is already serving in the city of Sacramento, 5,007 subscribers and using for this purpose approximately 220,000 cubic feet of gas per day. In addition to these contemplated extensions in the plant and equipment of applicant, applicant desires to pay off certain indebtedness heretofore created, the money so borrowed having been spent entirely in the extension and improvement of the gas distributing system of applicant. Applicant estimates the expenditures to be made from the proceeds derived from the sale of the bonds which it now desires to issue as follows:

|  |              |
|--|--------------|
| 1. The payment of a promissory note of the face value of \$19,500, dated March 26, 1913, payable to California National Bank of Sacramento, the proceeds of which were spent in the construction of applicant's plant----- | \$19,500 00  |
| 2. Reimbursement of the treasury of applicant for amounts paid from income within the past five years for improvements in the plant of applicant-----  | 4,100 00     |
| 3. Construction of a gas holder-----   | 35,000 00    |
| 4. Purchase of land upon which gas holder is to be constructed-----  | 6,000 00     |
| 5. Nine hundred meters at \$6.00-----  | 5,400 00     |
| 6. Extensions of mains and service pipes:  |              |
| 2,000 feet 1-inch pipe-----  | \$60 00      |
| 40,000 feet 1½-inch pipe, wrought-----   | 2,408 00     |
| 12,400 feet 2-inch pipe-----   | 1,201 00     |
| 7,500 feet 3-inch pipe-----  | 1,502 00     |
| 15,000 feet 4-inch pipe-----   | 4,440 00     |
| 11,200 feet 6-inch pipe-----   | 5,853 00     |
| 12,800 feet 8-inch cast pipe-----  | 9,728 00     |
| 12,200 feet 12-inch pipe-----  | 15,860 00    |
| Dipping wrought pipe-----  | 1,720 00     |
| 18½ tons lead-----   | 2,000 00     |
| Oakum-----   | 50 00        |
| Cast iron fittings-----  | 700 00       |
| Wrought iron fittings-----   | 1,000 00     |
| Cost of labor for laying cast iron 50 blocks-----  | 15,000 00    |
| Cost of labor for laying wrought pipe-----   | 28,750 00    |
| Cost of labor for laying service pipes-----  | 5,000 00     |
| 7. Boring of gas well-----   | 15,000 00    |
| Total -----  | \$180,272 00 |

Applicant stated at the hearing that it desired, if possible, to keep well within the above estimates. This being so, I do not see the need of applicant issuing bonds in the face value of \$200,000. Applicant stated that it was prepared to issue its bonds at not less than 95, and I accordingly recommend that applicant be permitted to issue its bonds to the par value of \$180,000 at not less than 95, and the proceeds to be used for the purposes above mentioned.

It appeared at the hearing that of the \$200,000 par value of bonds

already issued by applicant, \$13,000 par value of these bonds, namely, bonds numbered 188 to 200 inclusive, were issued July 8, 1912. These bonds having been issued subsequent to March 23, 1912, the effective date of the Public Utilities Act, were issued in violation of section 52 of that act. I am satisfied, however, that this violation of the Public Utilities Act was unintentional, and at the hearing applicant amended its application in this proceeding to include a request that the Commission ratify the issue of bonds made on July 8, 1912. As these bonds were disposed of at par and the entire amount derived from the sale of them expended in the construction of applicant's plant, I recommend that the Commission authorize the issue of these bonds.

I recommend the following form of order:

**ORDER.**

Sacramento Natural Gas Company having applied to this Commission for permission to issue 200 of its first mortgage 30-year 6 per cent gold bonds of the par value of \$200,000, and for permission to issue 13 additional first mortgage 30-year 6 per cent gold bonds issued on July 8, 1912, in violation of section 52 of the Public Utilities Act,

And a hearing having been duly held upon this application, and the Commission finding that the purposes for which these bonds are to be issued and approved are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that Sacramento Natural Gas Company be and the same is hereby authorized to issue 13 of its first mortgage 30-year 6 per cent gold bonds of the par value of \$13,000, said bonds to be issued so as to net applicant the par value thereof and the proceeds derived from the sale of said bonds are to be expended in the construction of applicant's plant; and

*It is further ordered* that Sacramento Natural Gas Company be and the same hereby is authorized to issue 180 of its first mortgage 30-year 6 per cent gold bonds of the par value of \$180,000 upon the following conditions, and not otherwise, to wit:

1. Sacramento Natural Gas Company shall sell the 180 bonds herein authorized to be issued so as to net applicant not less than 95 per cent of the par value thereof.

2. The proceeds from the sale of these 180 bonds herein authorized to be issued shall be applied to the purposes set forth in the foregoing opinion, and which may be summarized as follows:

|  |             |
|--|-------------|
| (a) Payment of note of applicant due California National Bank of Sacramento, dated —, of the face value of...                      | \$19,500 00 |
| (b) Reimbursement of treasury of applicant for money expended during the past five years in improvements to applicant's plant..... | 4,100 00    |
| (c) Construction of gas holder.....  | 35,000 00   |
| (d) Land upon which gas holder is to be constructed.....   | 6,000 00    |
| (e) Meters .....   | 5,400 00    |
| (f) Extensions of mains and service pipes.....   | 95,000 00   |
| (g) Boring gas well.....   | 15,000 00   |

3. Sacramento Natural Gas Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

4. The authority herein given to issue bonds shall apply only to bonds issued by Sacramento Natural Gas Company on or before the 1st day of November, 1913.

5. The payment of the minimum fee prescribed in section 57 of the Public Utilities Act shall be a condition precedent to the effectiveness of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of April, 1913.

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DECISION No. 602.

IN THE MATTER OF THE APPLICATION OF MIDWAY GAS COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AUTHORIZATION TO EXERCISE RIGHTS AND PRIVILEGES UNDER FRANCHISES HERETOFORE GRANTED TO IT IN THE COUNTIES OF KERN AND LOS ANGELES AND IN THE CITIES OF SAN FERNANDO AND BURBANK, UNDER SECTIONS 50 A, B AND c OF THE PUBLIC UTILITIES ACT.

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Application No. 202.

*Decided April 25, 1913.*

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A denial in the above matter having been entered February 20, 1913, and applicant subsequently having filed a supplemental petition removing the essential objections upon which the denial was predicated, *held*, that the application be granted.

*S. M. Haskins*, for Applicant.

REPORT OF THE COMMISSION.

ESHLEMAN and EDGERTON, *Commissioners*.

On the 20th day of February, 1913, this Commission denied the above application mainly on the ground that the contractual relations set up

between the parties involved in the furnishing of gas through the pipe line leading from the gas fields in Kern County to the city of Los Angeles attempted to remove the parties furnishing the gas from public regulation. There were certain other minor objections, but the principal consideration which moved the Commission to a denial of the application to exercise franchises was this attempt to restrict by contract the power of the State to regulate both the wholesale and retail price of a commodity which is of such general use as to bring the agency supplying such commodity to the public into the class of a public utility.

In the opinion denying the application the Commission uses the following language:

"Believing as we do that this plan may be worked out in such a way that while being fair to the promoters and producers of natural gas it will likewise be fair for the public, and believing likewise that the enterprise in itself, if freed from the objections which we have here set out, may greatly benefit the public, we suggest that the applicant again submit the matter to the Commission formally or informally with a view to working out the plan as we believe it should be."

Acting upon this suggestion the representatives of the parties both to this application and those not parties to the application but parties to the contracts which the Commission considered objectionable, held several informal conferences with representatives of the Commission, and the Commission desiring, as always, to promote legitimate enterprise and not impede it, made various suggestions with reference to amendments to the contracts which would obviate the objections theretofore found. In compliance with said suggestions of the Commission, the parties to these contracts have executed the following modifications of their main contract:

MODIFICATION OF CONTRACT FOR SALE OF NATURAL GAS EXECUTED  
ON OCTOBER 26, 1912, BY AND BETWEEN SOUTHERN CALIFORNIA  
GAS COMPANY, LOS ANGELES GAS AND ELECTRIC CORPORATION  
AND MIDWAY GAS COMPANY.

Whereas the Railroad Commission of the State of California requires that said contract be modified in certain respects, and particularly that it affirmatively appear in said contract that the parties thereto recognize that the contractual relations therein established do not in any wise relieve said parties from any regulation by any public authority;

Now, therefore, in consideration of the premises said contract is, by mutual consent of all the parties thereto, on this 11th day of April, 1913, modified in the following particulars, to wit:

*First*—By inserting in line 2 of page 56 of said contract after the word "gas" and before the word "is" the following: "for any of the purposes specified in the next preceding paragraph."

*Second*—By inserting on page 59 of said contract after the sentence ending on line 2 of said page the following: “Neither by this nor by any other provision of this contract is it attempted to relieve any of the parties hereto from any lawful regulations either of rates or service by any competent authority. The parties hereto have assumed mutual obligations and it is the design of such parties to prevent the impairment, except by mutual consent, of one part of this contract while the other substantial parts stand. In attempting to effectuate such design in this contract, it is recognized, however, by the parties hereto that the contractual relations herein established do not in any wise relieve such parties from any regulations by any public authority, and it is affirmatively recognized that the same power to regulate the parties hereto exists notwithstanding this contract.”

This modification is subject to all definitions and terms of the contract.

*In witness whereof*, the Southern California Gas Company, said first party, has caused its corporate name and seal to be hereunto affixed, and this modification of contract to be signed by its first vice-president, and attested by the signature of its secretary, thereunto duly authorized so to do by resolution duly adopted by its board of directors; and the Los Angeles Gas and Electric Corporation, said second party, has caused its corporate name and seal to be hereunto affixed, and this modification of contract to be signed by its vice-president, and attested by the signature of its secretary, thereunto duly authorized so to do by resolution duly adopted by its board of directors; and the Midway Gas Company, said third party, has caused its corporate name and seal to be hereunto affixed, and this modification of contract to be signed by its president, and attested by the signature of its secretary, thereunto duly authorized so to do by resolution duly adopted by its board of directors—all as of said ---- day of April, 1913.

Executed in triplicate, and to be attached to the said contract.

SOUTHERN CALIFORNIA GAS COMPANY,

[SEAL] By A. N. KEMP, First Vice-President.

Attest: J. F. MARTYN, Secretary.

LOS ANGELES GAS AND ELECTRIC CORPORATION,

[SEAL] By WM. BAURHYTE, Vice-President.

Attest: H. M. ADAMS, Secretary.

MIDWAY GAS COMPANY,

[SEAL] By JOHN MARTIN, President.

Attest: CYRUS PEIRCE, Secretary.

STATE OF CALIFORNIA, }  
County of Los Angeles. } ss.

I, J. F. Martyn, secretary of the Southern California Gas Company, a corporation, hereby certify that the foregoing is a full,

true and correct copy of a modification of contract for sale of natural gas executed on October 26, 1912, by and between Southern California Gas Company, Los Angeles Gas and Electric Corporation and Midway Gas Company, dated April 11th, 1913.

Dated April 16, 1913.

J. F. MARTYN,

[SEAL]

Secretary of said Southern California  
Gas Company, a corporation.

After again carefully going over all of the contracts involved we are of the opinion that these amendments remove all of the objections which the Commission has heretofore urged against these contracts, with one exception, which is, the provision concerning the taking of natural gas from the public lands of the United States. The parties to these contracts who are engaged in the distribution of gas point out quite properly that it is immaterial to them whether they pay the Federal Government or the Southern Pacific Company the agreed price for the natural product, and that this is a matter utterly beyond their control, and that after having made large expenditures and having modified the contracts in every other respect within their power to do, in compliance with the Commission's suggestions, it is not fair to them to deny the application because of a circumstance over which they have no control. We have called this aspect of the case to the attention of the Federal authorities and under all the circumstances we believe that on this ground alone we should not deny the application. The application and the contracts now clearly remove the objection of the Commission concerning the restriction of territory, the restriction of the supply of gas and the reservation of the subject matter of the contracts from control by public authority. Of course, in this application it is not necessary for the Commission to consider the amount of the rate agreed upon in these contracts so long as it is clearly understood that this is a matter which the contracts do not remove from the control of the Commission, or other proper public authority. We have no information as to whether or not the wholesale rate is too high or too low, that being a matter which under a proper proceeding may be as well determined hereafter, under the terms of the present contracts, as though the contracts were not made.

We recommend that the application be granted and submit the following supplemental order:

**SUPPLEMENTAL ORDER.**

Midway Gas Company, a public utility, having heretofore applied to this Commission for an order that the present and future public convenience and necessity require the construction by it of a pipe line from the Midway gas fields in Kern County to a point near the city of Los Angeles in the county of Los Angeles, and exercise by said applicant

of franchise rights heretofore granted by the counties of Kern and Los Angeles and the cities of San Fernando and Burbank, but which franchises have not heretofore been actually exercised, and a hearing having been held and said application having been on the 20th day of February, 1913, denied, and the applicant and the parties to the contracts fully described in the opinion heretofore rendered on said date, having modified their contracts so as to remove the objections which the Commission set out in its opinion heretofore rendered; and being fully apprised in the premises,

*It is hereby ordered* that the Midway Gas Company be granted a certificate of public convenience and necessity to construct a pipe line from the Midway gas fields in Kern County to a point near the city of Los Angeles in the county of Los Angeles, as more fully described in the application and in the opinion heretofore rendered, and that the said Midway Gas Company be granted permission to exercise franchises heretofore granted to it by the counties of Kern and Los Angeles and the cities of San Fernando and Burbank.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

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DECISION No. 603.

IN THE MATTER OF THE APPLICATION OF NEW FREEPORT  
TELEPHONE AND TELEGRAPH COMPANY FOR PERMIS-  
SION TO MAKE INCREASE IN RATE FOR LOCAL  
SWITCHES FOR SUBSCRIBERS.

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Application No. 309.

*Decided April 25, 1913.*

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W. H. Devlin, for Applicant.

H. D. Pillsbury, for The Pacific Telephone and Telegraph Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application to raise telephone rates. A hearing held in Sacramento, California, developed a peculiarly complicated telephone situation, arising from the vague use of telephone terms. To quote the language of the application:

“That applicant desires to increase the rate or charge for the



rental of each telephone so as to substitute in lieu of the present rate therefor the following rate, to wit:

"For rental of each telephone one dollar and fifty cents (\$1.50) per month with the privilege of fifteen (15) local switches of not to exceed three (3) minutes each in length and an additional charge of five cents (5¢) for each minute, or fractional part thereof, over said initial period of three (3) minutes.

"An additional charge of ten cents (10¢) will be made for each local switch, of not to exceed three (3) minutes each in length, in excess of fifteen (15) switches during any month, and five cents (5¢) for each minute, or fractional part thereof, over said initial period of three (3) minutes."

The present rental applying to applicant's telephones is "fifty cents (50¢) per month with unlimited use thereof for conversations with subscribers on the same line and with whom connection is not made through central."

A subsequent investigation by the Commission was necessary in order to secure any adequate understanding of the real merits of the case. Neither the investigation of the Commission nor the testimony developed at the hearing has justified the advance in rates as requested. Investigations of the Commission have, however, enabled the applicant company to secure modified switching arrangements with The Pacific Telephone and Telegraph Company which will materially increase applicant's revenue. In view of this additional revenue and of the failure of applicant to justify the rates asked for, I think we are warranted in dismissing this application, in view of which I recommend the following order:

**ORDER.**

Application having been made by New Freeport Telephone and Telegraph Company for permission to make increase in rates for local switches for subscribers, and a hearing having been held and no sufficient justification for such advances having been developed, although the applicant's financial condition has been materially improved by the incidental investigations of this Commission,

*It is hereby ordered* that the application of the Freeport Telephone and Telegraph Company for permission to make increase in rates for local switches for subscribers be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

## DECISION No. 604.

IN THE MATTER OF THE APPLICATION OF TERRA BELLA CITY WATER COMPANY TO PURCHASE AND OF TERRA BELLA DEVELOPMENT COMPANY TO SELL THE WATER PLANT AND SYSTEM OF TERRA BELLA DEVELOPMENT COMPANY AND OF TERRA BELLA CITY WATER COMPANY TO ISSUE ONE HUNDRED FIFTY SHARES OF ITS CAPITAL STOCK TO SAID TERRA BELLA DEVELOPMENT COMPANY IN PAYMENT THEREFOR.

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Application No. 339.

*Decided April 25, 1913.*

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The Terra Bella Development Company, desiring to keep the business of furnishing water separate and distinct from its real estate business, incorporated the Terra Bella City Water Company, and asked permission to transfer the water system to the new company and to receive in payment therefor 150 shares of its capital stock. The Terra Bella City Water Company asked approval to the issue of said stock.

Application granted, the water company having stipulated that the said 150 shares of its capital stock shall not be considered by the Commission or any other competent authority in future proceedings relating to the fixing of rates to be charged by said company or its successors.

*Frank J. Thomas, for Applicants.*

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This application came on regularly for hearing at Los Angeles April 23, 1913, after the preliminary requirements, such as notice of hearing, filing copies of the articles of incorporation, financial statements, certificates of publication, etc., had been duly complied with, and the testimony discloses the following state of facts:

The Terra Bella Development Company was incorporated to sell real estate in a section of Tulare County. That within the section where the real estate of said company was located, the town of Terra Bella was started and a water plant was developed for the purpose of supplying said town of Terra Bella City.

In order to separate the business of supplying water to the inhabitants of Terra Bella City from the real estate business, the Terra Bella City Water Company was incorporated and the Terra Bella water plant was developed by putting down a well which the testimony shows has a capacity of 50 miner's inches or 450 gallons per minute.

A statement of the expense of the installation of said plant in great detail accompanied the application, showing that the plant cost some-

thing over \$16,000. It is possible, and even probable, that a careful check of this statement by a competent engineer might result in the elimination of some of the items, but the necessity for such check does not seem and is not apparent for the disposition of this application.

The installation is practically new and the testimony showed that the people of Terra Bella City were entirely satisfied with the service and rates, and that there was no intention on the part of the company to change the rates; that the supply of water was sufficient to care for the present needs of Terra Bella City and its probable additions in population for some time to come and that the Terra Bella City Water Company was prepared and expected to add to its supply by sinking other wells when the necessity for such expansion arises.

The stockholders and directors of the Terra Bella Development Company and the Terra Bella City Water Company are practically identical. The Terra Bella City Water Company is incorporated for \$25,000, divided into 250 shares, par value \$100, none of which have been issued pending the decision of this application to the Railroad Commission.

The Terra Bella Development Company now asks to sell the water plant to the Terra Bella City Water Company and the Terra Bella City Water Company joins in that request and also asks permission to issue 150 shares of its authorized issue of 250 shares, said 150 shares to be given to the Terra Bella Development Company in payment of the purchase price of said water plant.

I believe that the interests of the public will best be served by permitting the transfer by the Terra Bella Development Company to the Terra Bella City Water Company of the water plant of Terra Bella and by granting permission to the Terra Bella City Water Company to issue 150 shares of its stock at par in payment therefor.

I recommend the following order:

**ORDER.**

Whereas the Terra Bella Development Company of Terra Bella, Tulare County, California, is the owner of a water plant devoted to the purpose of supplying the residents of Terra Bella City, Tulare County, California, with water; and

Whereas said Terra Bella Development Company desires to keep the business of furnishing water separate and distinct from its real estate business and to that end has incorporated the Terra Bella City Water Company and now asks permission to transfer the ownership of said water plant to said Terra Bella City Water Company and receive in payment therefor 150 shares of the Terra Bella City Water Company's stock, which amount of stock the Terra Bella City Water Company asks permission to issue, at par value to be paid to the Terra Bella Development Company for said water plant; and

The Commission finding that the interests of the public will best be served by permitting said transfer and said issue of stock;

*It is hereby ordered* that the Terra Bella Development Company be and it is hereby granted permission to sell its water plant at Terra Bella City, Tulare County, California, to the Terra Bella City Water Company for 150 shares of the Terra Bella City Water Company's stock, and the Terra Bella City Water Company be and it hereby is granted permission to purchase said water plant from the Terra Bella Development Company and to issue to the Terra Bella Development Company 150 shares of its stock at par in payment therefor.

The Terra Bella City Water Company stipulates that the price which it pays for the water plant, to wit, 150 shares of its stock, shall not be considered, by the Railroad Commission or any other competent authority, in future proceedings relating to the fixing of rates to be charged the residents of Terra Bella City by the Terra Bella City Water Company or its successors.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

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DECISION No. 605.

IN THE MATTER OF THE APPLICATION OF ANGELS' FLIGHT  
RAILWAY COMPANY TO PURCHASE THE ANGELS'  
FLIGHT RAILWAY IN THE CITY OF LOS ANGELES.

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Application No. 306.

*Decided April 25, 1913.*

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On the basis of the earning power of the property proposed to be transferred, the vendee company asked permission to capitalize the purchase with the issue of \$100,000 capital stock and \$40,000 six per cent bonds of an authorized issue of \$100,000 bonds. As part of the agreement between the parties, no additional bonds above the \$40,000 were to be issued without the consent of the holders of a majority of said \$40,000 bonds.

**Held,** To permit holders of outstanding bonds to determine whether or not additional bonds should be issued, to an extent usurps the functions of the Commission and places in the hands of individuals the power to seriously handicap the corporation.

**Held,** It is obvious that the earning basis is not a proper one upon which to base capitalization for the reason that public utilities being subject to rate fixing, capitalization based on earnings to-day, would have entirely different security and probability of payment were these rates changed by a rate fixing body tomorrow. Hence, the Commission has long since determined

that a safe basis for determining what capitalization should be permitted on a given property, is the value of such property. Application granted upon conditions precedent, the purchasing company being permitted to issue \$14,000 capital stock and \$40,000 bonds.

*Milton K. Young*, for Angels' Flight Railway Company.

*John D. Pope*, for J. W. Eddy.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application joined in by Angels' Flight Railway Company, Funding Company of California, and J. W. Eddy for an order authorizing the Angels' Flight Railway Company to issue \$40,000 face value of bonds and to mortgage its property as security therefor, and to issue \$100,000 par value of stock, and for an order authorizing J. W. Eddy to sell and said Angels' Flight Railway Company to purchase a passenger cable railway known as "Angels' Flight," located in the city of Los Angeles.

J. W. Eddy built, and for many years operated, a cable railway for conveying passengers one block between Hill street and Olive street in the city of Los Angeles, and in the month of May, 1912, he entered into a contract with the Funding Company of California, whereby he agreed to convey said railway property in consideration of the delivery to him of \$18,000 par value of the capital stock of the Funding Company, estimated to be worth \$20,000, and cash \$20,000, and it was further agreed that a corporation should be organized, to which this railway property was to be transferred and this corporation should issue \$40,000 face value of six per cent bonds to become due July 1, 1924, and to be delivered to Mr. Eddy as a further consideration for the transfer of his property.

The Funding Company paid the \$20,000 cash and \$20,000 worth of its stock to Mr. Eddy and has caused the incorporation of Angels' Flight Railway Company with \$100,000 par value of capital stock, and this Commission is now asked to authorize the issue of all of this stock to the Funding Company and of \$40,000 face value of bonds to Mr. Eddy for the transfer of his property.

Mr. Eddy states that he has invested in this railway property \$50,000, and the Funding Company alleges that it has since the execution of the aforementioned agreement, expended several thousand dollars in betterments, improvements and replacements.

The earnings of this railway are now about \$12,000 net a year, and applicants urge that they be allowed to capitalize this property on a basis of earnings. It is obvious that the earning basis is not a proper one upon which to base capitalization, for the reason that public utilities being subject to rate fixing, capitalization based on earnings to-day,

would have entirely different security and probability of payment were these rates changed by a rate fixing body to-morrow. Hence, the Commission has long since determined that a safe basis for determining what capitalization should be permitted on a given property, is the value of such property.

It appears from the evidence that there is a reasonable margin between the value of the property and the \$40,000 of bonds asked to be issued, and I recommend that the issue of such bonds be authorized.

The request for the issuance of \$100,000 of capital stock should not be granted, and I recommend that an authorization be made for \$14,000 par value of such stock.

The trust deed under which these bonds are to be issued has not yet been prepared, and I recommend as a condition precedent to the effectiveness of this order that a trust deed be prepared and submitted before its execution, for the approval of this Commission.

Proceedings have been taken by applicant to authorize an issue of \$100,000 face value of bonds, \$40,000 of which are to be used as above stated, the remaining \$60,000 thereof to be used hereafter in improving the property. We are not asked at this time to authorize the issuance of the \$60,000 of bonds. But it is stated as part of the agreement between the parties herein that no additional bonds above the \$40,000 shall be issued without the consent of the holders of a majority of said \$40,000 of bonds.

While this is a matter which may be determined at the time the proposed trust deed is submitted, I recommend that no agreement having this effect be approved by the Commission. To permit holders of outstanding bonds to determine whether or not additional bonds should be issued, to an extent usurps the functions of this Commission and places in the hands of individuals the power to seriously handicap the corporation.

I submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by Angels' Flight Railway Company to issue \$40,000 face value of six per cent bonds, to become due not later than July 1, 1924, and \$100,000 par value of capital stock and authorizing it to purchase for said stock and said bonds that certain railroad incline and passenger conveying system now owned by J. W. Eddy in the city of Los Angeles, and which is commonly known as and called "Angels' Flight" and authorizing said company to mortgage said property as security for the payment of said bonds, and for an order authorizing J. W. Eddy to sell said Angels' Flight Railway to said Angels' Flight Railway Company.

And a public hearing having been duly held and it appearing to the Commission that it is proper that the Angels' Flight Railway Company issue and deliver stock and bonds to the amount hereinafter provided for the acquisition of the railroad property within the city of Los Angeles known as "Angels' Flight," and that public convenience and necessity will be served by the sale of said railroad property by J. W. Eddy, to said Angels' Flight Railway Company.

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Angels' Flight Railway Company of \$40,000 face value of six per cent bonds, to be payable not later than July 1, 1924, and \$14,000 par value of capital stock, and to pay and deliver said stock and bonds for the transfer to it of the railroad property situated in Los Angeles, California, and known as "Angels' Flight," Railway Company is further authorized to mortgage its property to secure the payment of said bonds;

*And it is hereby further ordered* that the Railroad Commission of the State of California does hereby authorize the sale by J. W. Eddy and the purchase by Angels' Flight Railway Company for the considerations above stated, of that certain property situated in the city of Los Angeles and known as "Angels' Flight."

As conditions precedent to the effectiveness of this order, said Angels' Flight Railway Company shall submit before its execution for the approval of this Commission, a trust deed under which said bonds are to be issued, and as a further condition precedent to the effectiveness of this order, there shall be submitted for the approval of this Commission a conveyance setting out in detail the property to be transferred under the authority of this order, and which property is generally known as "Angels' Flight."

The rights and privileges granted by this order shall be exercised within a period of six months from the date hereof, and if not exercised within such time, such rights and privileges shall cease and this order will thereupon become void.

The payment of the fee prescribed in section 57 of the Public Utilities Act shall be a condition precedent to the effectiveness of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

## DECISION No. 606.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CHANGE THE LOCATION OF ITS PASSENGER DEPOT IN THE CITY OF PORTERVILLE, TULARE COUNTY, CALIFORNIA; AND ALSO FOR PERMISSION TO CONSTRUCT A SIDETRACK AND A SPUR TRACK AT GRADE ACROSS CERTAIN STREETS IN SAID CITY.

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Application No. 474.

*Decided April 25, 1913.*

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Approval given applicant to change location of its passenger depot in the city of Porterville and to construct a sidetrack and a spur track at grade across certain streets in said city.

*Geo. D. Squires*, for Southern Pacific Company.

*Murray & Knupp*, for parties favoring the application.

*Alfred Daggett et al.*, for parties protesting the application.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Southern Pacific Company, a corporation, on March 31, 1913, in pursuance of the provisions of General Order No. 30, filed with the Commission an application for permission to remove its present passenger depot facilities in the city of Porterville, Tulare County, California, from their present location between Vine and Olive streets to a new location between Lafayette and Cleveland streets; also for permission to construct a sidetrack at grade across Cherry, Lafayette, Cleveland and Thurman streets, and a spur track at grade across Lafayette and Cherry streets of said city. The application stated that said removal was desired on the part of the applicant to better accommodate the traveling public and further advised that more commodious facilities would be provided at the new site should the application be granted than were now provided at the present depot.

On February 26, 1913, and subsequently, petitions had been filed with the Commission by a number of citizens living apparently in the vicinity of the present depot, protesting against the proposed removal. In order that all interested parties might have the opportunity of presenting their approval or objections to the application and that the Commission might ascertain all of the facts in the case and determine if such proposed removal would in fact be for the convenience and accommodation of the traveling public and the majority of the citizens of Porterville, a public hearing was held in the town of Porterville,



on April 16, 1913, after due notice by publication and otherwise had been given.

Testimony was introduced at the hearing by parties desiring such removal of the passenger depot facilities and also by parties opposed to such removal. The city of Porterville is divided by a drainage channel known as Porter Slough. Those citizens living north of Porter Slough generally approved the removal of the depot to the proposed new location, and those citizens living south of the slough opposed such removal. It developed, however, and the preponderance of testimony was in effect, that the greater part of the population and business interests of the city of Porterville were located north of Porter Slough, and, therefore, the passenger depot in the proposed new location will more conveniently and adequately serve the city. Applicant proposes to retain the freight depot at its present location.

It was shown that the business center of the city of Porterville is on Main street, between Mill street and Putnam street, about two (2) blocks east of the new depot site and about five (5) blocks from the present depot. In order to reach the present depot from the business center, however, it is necessary to cross Porter Slough, which is quite objectionable. The assessed value of property within the city north of Porter Slough is about four (4) times the assessed value of city property south of Porter Slough. Three quarters ( $\frac{3}{4}$ ) of the total water users of the city live north of Porter Slough and one quarter ( $\frac{1}{4}$ ) live south of Porter Slough.

The evidence submitted shows conclusively that the passenger depot located between Lafayette and Cleveland streets, as proposed by applicant, will accommodate and serve more conveniently and adequately the people of Porterville and at the same time be nearer both the business center and the center of population than the present passenger depot.

No objection was made to the granting of the grade crossings over streets for the sidetrack and spur track prayed for.

In my opinion, therefore, the application should be granted, and I submit herewith the following form of order:

#### ORDER.

Southern Pacific Company, a corporation, having on March 31, 1913, filed with the Commission an application for permission to remove its present passenger depot facilities between Vine and Olive streets, city of Porterville, Tulare County, California, to a new location between Lafayette and Cleveland streets, and to construct a sidetrack and spur track across certain streets in said city as hereinafter indicated and as shown by the map attached to the application, and it appearing that a public hearing, after due notice, has been held in the city of Porter-

ville, on April 16, 1913, at which applicant and all parties favoring the removal of said depot facilities and also those protesting against such removal were heard, and testimony and evidence having been taken concerning the necessity for such removal and the greater accommodation thereby of the citizens of Porterville and the traveling public; and it further appearing to the Commission that applicant by the removal of its passenger depot facilities in said city of Porterville to the new site proposed will better and more conveniently serve and accommodate the citizens and business interests of the city of Porterville and the traveling public going to and from said city,

*It is hereby ordered* that the application of Southern Pacific Company shall be and the same is hereby granted, and it is hereby authorized to move its passenger depot facilities from their present location between Vine and Olive streets to the site selected on the west side of "D" street and between Lafayette and Cleveland streets of said city;

*And it is further ordered* that permission be hereby granted to applicant to construct a sidetrack at grade across Cherry street, Lafayette street, Cleveland street and Thurman street, and a spur track at grade across Lafayette street and Cherry street, as prayed for in the application and as shown by the map attached thereto, subject to the following conditions, and not otherwise, to wit:

1. The cost of constructing said crossings, together with the expense of their maintenance, hereafter, in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

2. Said crossings shall be constructed of a width (parallel with the track) of not less than forty (40) feet with grades of approach not exceeding six (6) per cent and shall be ballasted with stone or gravel ballast to a depth of not less than six (6) inches for a distance of not less than twenty (20) feet on each side of the tracks.

3. The Commission reserves the right to hereafter make such further orders relating to the construction, maintenance, operation and protection of said crossings as to it may seem right and proper and when, in its opinion, public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

## DECISION No. 607.

IN THE MATTER OF THE APPLICATION OF VALLEJO AND  
NORTHERN RAILROAD COMPANY FOR PERMISSION TO  
CONSTRUCT ITS MAIN LINE TRACK AT GRADE ACROSS  
THE TRACKS OF SOUTHERN PACIFIC COMPANY IN  
THE TOWN OF SUISUN, SOLANO COUNTY, CALIFORNIA.

Application No. 407.

*Decided April 25, 1913.*

Upon application of Vallejo and Northern Railroad Company for permission to construct its main line track at grade across the tracks of Southern Pacific Company on Union avenue in the city of Suisun, it appeared that the best interests of the public and the railroads demanded an avoidance of a crossing at grade at this point. Applicant and Southern Pacific Company having agreed upon the construction of an undergrade crossing and upon the division of the costs thereof, and the cities of Suisun and Fairfield having offered no reasonable nor substantial objections to the construction of such crossing, and having indicated a willingness to pay the cost of such damages as might be awarded owners of abutting property, permission is given to the construction of an undergrade crossing upon terms and conditions specified in the order.

*T. T. C. Gregory*, for Applicant.

*Geo. D. Squires*, for Southern Pacific Company.

*C. J. Goodell*, for City of Suisun.

*Paul C. Harlan*, for City of Fairfield.

## REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

On February 15, 1913, the Vallejo and Northern Railroad Company, a corporation, filed with the Commission an application for permission to construct its main line track at grade across the tracks of Southern Pacific Company on Union avenue in the city of Suisun, Solano County, California. A public hearing was held by the Commission on March 18, 1913, at which the parties at interest, viz, the Vallejo and Northern Railroad Company and Southern Pacific Company were represented by counsel and testimony was taken concerning the matters contained in the application.

Southern Pacific Company took the position that a grade crossing at a point designated was very dangerous and introduced unusual hazard in the operation of its trains and cars. It contended that it was reasonable and practicable to avoid a grade crossing at the point selected. It was stated that if the crossing were permitted to be constructed at grade and a standard interlocking device were installed for its protection, such device would cost approximately \$20,000. The cost of operating and maintaining the device was estimated to be \$4,750

per year, which would represent a capital investment of \$95,000. In other words, a grade crossing interlocked, according to the testimony, would represent a capital investment of approximately \$115,000.

The testimony indicated that if the track of the Vallejo and Northern Railroad Company were to be constructed either overhead or under the tracks of Southern Pacific Company on Union avenue that the safety and convenience of the public demanded that the avenue itself should also be carried with the railroad and the present grade crossing of the avenue with the Southern Pacific Company's tracks should be abolished.

The Southern Pacific Company at the hearing presented to the Commission the proposition that if the Commission would order a separation of grades at the point of crossing of both Union avenue and the Vallejo and Northern Railroad, it would assume one half ( $\frac{1}{2}$ ) of the cost of the construction thereof if Vallejo and Northern Railroad Company would also assume one half ( $\frac{1}{2}$ ) of the cost of construction, and provided, also, that the cities of Suisun and Fairfield would pay such damages to owners of abutting property as might reasonably be held to accrue on account of the construction of an overhead or undergrade structure.

Applicant agreed to the proposition submitted by Southern Pacific Company, and the hearing adjourned with the understanding that another hearing would be held on the application before the Commission in the city of Suisun, at which the cities of Suisun and Fairfield would be cited to show cause why the present grade crossing of Union avenue with Southern Pacific Company's tracks in Suisun should not be abolished. The city of Fairfield was considered as being a party interested in this matter, due to the fact that the south boundary line of the city of Fairfield crosses Union avenue a short distance north of the crossing and any undergrade or overhead structure would encroach within the limits of this city.

After due notice to the boards of trustees of the cities of Suisun and Fairfield, and notices to the city attorneys of both cities, a hearing was held in the city of Suisun on April 14, 1913, at which representatives of all parties interested appeared. The cities of Suisun and Fairfield were represented respectively by their city attorneys. Testimony was taken concerning the necessity for and advantages to be gained by abolishing the present grade crossing of Union avenue with the tracks of Southern Pacific Company in Suisun. All parties were generally of the opinion that the undergrade mode of crossing or a subway for both Union avenue and Vallejo and Northern Railroad was more to be desired than an overhead crossing. The city attorneys appearing for the cities of Suisun and Fairfield stated to

the Commission that they were not present at the hearing as representing the boards of trustees of said cities in their official capacities, since no meetings of said boards of trustees had been held since notice of the hearing was received at which official action could have been taken upon the notice issued by the Commission. It was the opinion, however, of the city attorneys, and also of several of the trustees of the city of Suisun, including the president of its board, that no reasonable nor substantial objection could be offered by either city to the construction of an undergrade crossing under the tracks of Southern Pacific Company on Union avenue which would take not only the track of the Vallejo and Northern Railroad Company, but the street traffic of Union avenue as well, and that the basis proposed for dividing the cost of the subway between the railroads and the cities was fair and reasonable. In fact, the testimony of the city attorneys, trustees, and other parties present at the hearing was in effect that the elimination of the present grade crossing of Union avenue with the tracks of Southern Pacific Company was desirable from every standpoint, and that the cities of Suisun and Fairfield could reasonably be required and would willingly assume the cost of such damages as must accrue to abutting property by reason of the construction of a subway or undergrade crossing. The present grade crossing was conceded by all witnesses and parties present to be a very dangerous one, and the safety of the public demanded that it be removed if possible.

If applicant is permitted to construct a grade crossing at the point designated, public safety will demand that it be interlocked. The testimony shows that this will represent a capital investment of not less than \$115,000. If an interlocking device be constructed it will prevent the placing of the passenger depot (which has been required to be constructed by Southern Pacific Company under a previous order of the Commission) at or near the junction of Union avenue with Southern Pacific Company's tracks, owing to the fact that it will not be practicable to permit trains to stand within the derail limits of the interlocking, which limits will be approximately 500 feet on each side of the crossing; and, therefore, the depot could not be reasonably placed nearer than 750 feet from the crossing with Union avenue. It is to the interest of both the cities of Suisun and Fairfield, and particularly Fairfield, that this depot be placed as near Union avenue as practicable. This question of a proper location for the passenger depot simply emphasizes the necessity for avoiding a grade crossing of Vallejo and Northern Railroad Company's track with the tracks of Southern Pacific Company, in order that the people of the two cities may be most conveniently served.

Union avenue is the main highway between Suisun and Fairfield, and several hundred vehicles per day now cross the four (4) tracks of the Southern Pacific Company thereon. The dangers of a grade crossing are many, and a number of serious accidents have already occurred at this point. In my opinion it is entirely practicable to avoid a grade crossing at the point designated and at a reasonable expense, if its cost be divided between the cities and the railroad companies upon the basis before suggested. The liability of accidents and consequent danger to the lives and property of the public and employees of the railroad companies will be obviated by avoiding a grade crossing of the railroads, and the hazard to the public of the highway grade crossing will be hereafter eliminated.

I, therefore, respectfully recommend that the Vallejo and Northern Railroad Company be required to construct its main line track under the tracks of Southern Pacific Company on Union avenue, city of Suisun, and that a subway at the same time be built of dimensions sufficient to carry the highway traffic using Union avenue, and that the cost of such subway be divided between applicant, Southern Pacific Company, and the cities of Suisun and Fairfield, upon the basis contained in the following form of order, which I submit for your approval:

**ORDER.**

Vallejo and Northern Railroad Company, a corporation, having on February 15, 1913, filed with the Commission an application for permission to construct its track at grade across the tracks of Southern Pacific Company on Union avenue in the city of Suisun, Solano County, California, and it appearing to the Commission that public hearings have been held at which all interested parties were represented, including representatives from the boards of trustees of both the cities of Suisun and Fairfield; and it further appearing that it is reasonable and practicable to avoid a grade crossing of the track of applicant with the tracks of Southern Pacific Company, provided, that the present grade crossing of Union avenue with Southern Pacific Company tracks is also at the same time abolished by the construction of an undergrade crossing or subway; and it further appearing that Southern Pacific Company has agreed to pay one half ( $\frac{1}{2}$ ) of the cost of such subway if applicant will pay one half ( $\frac{1}{2}$ ) of such cost and the cities of Suisun and Fairfield will pay the cost of such damages as might reasonably be claimed by owners of abutting property by reason of the construction of such undergrade crossing, and it further appearing that applicant is willing to stand one half ( $\frac{1}{2}$ ) of the cost of such undergrade crossing and that the cities of Suisun and Fairfield have offered no reasonable nor substantial objections to the construction of such crossing and have unofficially by their attorneys or trustees

indicated a willingness to share in such costs as above suggested; and it further appearing that public convenience and safety demand that an undergrade crossing of applicant's track with the tracks of Southern Pacific Company be made and that the present grade crossing of Union avenue in the city of Suisun with said tracks be abolished,

*It is hereby ordered* that Vallejo and Northern Railroad Company be and is hereby directed to construct its track on Union avenue in the city of Suisun, Solano County, California, under the tracks of Southern Pacific Company, and Southern Pacific Company and the cities of Suisun and Fairfield are hereby ordered to share in the cost of such undergrade crossing, which shall at the same time include the cost of constructing an undergrade crossing for the public highway known as Union avenue in said city of Suisun under said tracks of Southern Pacific, upon the following terms and conditions and in accordance with the specifications hereinafter set out:

(1) Applicant shall bear one half ( $\frac{1}{2}$ ) of the entire cost of the undergrade structure necessary for its railroad and Union avenue.

(2) Southern Pacific Company shall also bear one half ( $\frac{1}{2}$ ) of the entire cost of such undergrade structure.

(3) The cities of Suisun and Fairfield shall pay such damages as may be held by competent authority to accrue against property abutting on said subway by reason of the construction thereof, each city shall pay the damages assessed against the property within its own limits; and

*It is further ordered* that said subway shall be constructed to conform to the following specifications, viz:

(4) The clearance over the rails of applicant shall be not less than 18 feet and the clearance on each side of the center line of its tracks from any portion of the structure shall be not less than  $7\frac{1}{2}$  feet.

(5) The overhead clearance above the surface of the roadway of Union avenue shall be not less than 14 feet and the width of roadway between portions of the structure on each side shall not be less than 20 feet.

(6) Said structure shall be constructed in a first-class and workmanlike manner with concrete retaining walls on each side and throughout of suitable dimensions.

(7) The plans and specifications for the structure shall be presented to the Commission for its approval within ninety (90) days after the date of this order and said structure shall be completed and ready for the operation thereunder of trains and cars of applicant and the highway traffic on Union avenue, within one (1) year after the date of this order.

(8) There shall be constructed along the west side of Union avenue, being a continuation of the sidewalk, a concrete subway with overhead

clearance of 7 feet and side clearance of 6 feet, and otherwise to afford a safe and convenient passage for foot passengers under the tracks of Southern Pacific Company.

(9) The approaches of the subway on each side of the crossing for the track of applicant shall not exceed 4 per cent and for Union avenue shall not exceed 6 per cent.

(10) Applicant and Southern Pacific Company shall install and operate at their own expense a sump and with a suitable electric pump for the purpose of removing such water as may collect in the subway.

(11) Suitable iron railings and fences shall be placed upon the retaining walls and around the subway for the safety and protection of the public. Suitable electric lights shall be provided and maintained on proper posts at the entrances to the subway and the subway shall otherwise be properly lighted for the safety and convenience of high traffic at night. The expense of such lighting shall be borne equally by applicant and Southern Pacific Company, including the maintenance and operation thereof.

(12) The cost of hereafter maintaining the subway at all times in good and first-class condition for the safe and convenient use of the public shall be borne equally by applicant and Southern Pacific Company.

*It is further ordered* that pending the completion of the subway hereinbefore provided for applicant shall be permitted to install crossing frogs and operate its trains and cars at grade across the tracks of Southern Pacific Company. All such trains and cars of applicant shall come to a full stop within fifty (50) feet of the crossing, and shall not pass over same until proper signal has been received from a flagman who shall be stationed at the crossings, or from the conductor of such trains and cars who shall have gone forward and ascertained same to be safe. All trains and cars of Southern Pacific Company shall approach the crossings under full control and be prepared to stop before reaching same upon signal. A flagman shall be maintained on duty at the crossings during the hours of daylight, and the expense of such flagman shall be borne equally by applicant and Southern Pacific Company. The duties of said flagman shall be not only to flag trains and cars over the crossings, but also to give warning to vehicles and other road traffic passing over the tracks of Southern Pacific Company on Union avenue;

*And it is therefore ordered* that of the material excavated during the construction of the subway sufficient shall be used and placed on Union avenue in Suisun to raise the present street and sidewalk for its full width to the established grade for a distance of not less than six hundred (600) feet from the present nearest track of Southern



Pacific Company and also sufficient material shall be placed on private property abutting on Union avenue in Suisun within this distance with the consent of the owners to slope same from the aforesaid established grade of the sidewalk back upon the property on approximately a six (6) per cent grade;

*And it is further ordered* that the Commission hereby reserves the right to hereafter make such further orders relative to the construction, maintenance, operation, and protection of said subway and the crossing of applicant's track with the tracks of Southern Pacific Company and the crossing of Union avenue with said tracks as to it may seem right and proper when in its opinion public convenience and necessity demand that it take such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

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DECISION No. 608.

IN THE MATTER OF THE RATES AND SERVICE OF THE  
SAN GORGONIO WATER COMPANY AND THE BEAUMONT  
LAND AND WATER COMPANY.

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Case No. 308.

*Decided April 25, 1913.*

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Complaints against rates and service of respondent companies merged into an investigation into said matters upon the Commission's own motion. The municipality of Beaumont, in which respondents operate, was incorporated as a city subsequent to March 23, 1912, the effective date of the Public Utilities Act. Relying upon this fact, the San Gorgonio Water Company, admittedly a public utility corporation, contended that the statute under which the city incorporated, and section 23 of the constitution, gave the power to fix rates of utilities to the municipality, and, therefore, that the Commission had been ousted of jurisdiction over the rates charged by said respondents. Section 23 of the Constitution construed.

*Held.* The word "vested" used in this section must be given its usual significance, which is that every act necessary to be done has been done and the right or privilege is now finally placed. It can not be said that every act has been done to vest rights or privileges in a city which is not in existence. Clearly no right can vest in the absence of an entity which is the subject of the vesting. Therefore, the San Gorgonio Water Company is a public utility under the jurisdiction of the Commission.

In behalf of the Beaumont Land and Water Company, and in reliance upon *Thayer et al. vs. California Development Company et al.*, it was contended that said company is not a public utility subject to the jurisdiction of the Com-

mission because it is not serving the public with water but is only serving water for use on lands owned or sold by it, that its articles of incorporation specifically limit it to such distribution of water and that it is only distributing water under contracts which fix the price to be paid for such service. The *Thayer* case distinguished on the ground that the proceeding therein was instituted December 20, 1910, and at that time section 23 of the constitution, as it now stands, and the Public Utilities Act, had not been enacted.

*Held*, It is the duty of the Commission to give full force and effect to the solemn act of the people in adopting a constitutional provision and the carrying out of the provisions of such constitutional declaration by a legislative enactment until the Supreme Court specifically rules otherwise.

*Held*, Under section 23, article XII of the constitution, and subdivision X of section 2 of the Public Utilities Act, the Beaumont Land and Water Company is a public utility corporation subject to the jurisdiction of the Commission.

*Held*, The Commission may fix rates and control service on water distributed and to be distributed by said company regardless of the contracts heretofore made with consumers. (Citing matter of James A. Murray and Ed Fletcher, Application No. 118, Decision No. 536, and cases there reviewed.)

The Commission found as a fact that the charge of the San Gorgonio Water Company of \$50 for the right to receive irrigation water from said company is unjust and unreasonable. Other findings of fact made respecting the rules, regulations, service, and charges of respondents as summarized in the order wherein just and reasonable rules, regulations, and charges are prescribed.

*Waters & Goodcell*, for San Gorgonio Water Company and Beaumont Land and Water Company.

*E. A. Miller*, representing some of the complaining water users.

#### REPORT OF THE COMMISSION.

EDGERTON and LOVELAND, *Commissioners*.

On May 27, 1912, John Johnson filed a complaint with the Commission against the San Gorgonio Water Company and the Beaumont Land and Water Company, which case was assigned No. 275, in which he complains against the rates and certain phases of the service of these companies, and alleges that he has been refused water for irrigation except on payment of \$50 per acre for a so-called water right.

On June 5, 1912, Mrs. May M. Gray filed a complaint with the Commission against the San Gorgonio Water Company, in which she complains against the rates and service of that company.

On September 30, 1912, the Commission made its order calling in question the rates and service of the San Gorgonio Water Company and the Beaumont Land and Water Company, and assigned to this investigation Case No. 308. This order states that the complaints heretofore filed by John Johnson and May M. Gray are merged into the investigation of the Commission.

A hearing was duly held in the city of Beaumont in said Case No. 308, at which the testimony of the above complainants and other complaining consumers against the rates and service of the defendant companies was introduced.

Inasmuch as these companies are separate corporations, organized under articles of incorporation which specify different purposes, and

as their status with relation to the jurisdiction of this Commission is alleged to be different, it is best to consider them separately.

It is admitted that the San Geronio Water Company is a public utility corporation serving water to the citizens of the city of Beaumont, California. But it is argued by counsel for said company that it is not under the jurisdiction of the Commission, because subsequent to March 23, 1912, the date of the going into effect of the Public Utilities Act, this town of Beaumont was incorporated and became a city of the sixth class. The contention is that immediately upon the incorporation of a town or city this Commission is ousted of jurisdiction over rates of utility corporations operating within the borders of such new town or city, because the act under which the town or city incorporates gives the power to fix rates of utilities to the municipality. Section 23, article XII of the constitution reads in part as follows:

“From and after the passage by the legislature of laws conferring powers upon the railroad commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law, and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however*, that this section shall not affect such powers of control over any public utility vested in any city and county, or incorporated city or town as, at an election to be held pursuant to laws to be passed hereafter by the legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; *and provided, further*, that where any such city and county or incorporated city or town shall have elected to continue any powers respecting public utilities, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner to be prescribed by the legislature; or if such municipal corporation shall have surrendered any powers to the railroad commission, it may, by like vote, thereafter reinvest itself with such power. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith.”

It is earnestly urged by defendant that the language of this proviso extends to incorporated cities coming into existence after this section was put into effect by the enactment of the Public Utilities Act.

The word "vested" used in this section must be given its usual significance, which is that every act necessary to be done has been done and the right or privilege is now finally placed. It can not be said that every act has been done to vest rights or privileges in a city which is not in existence. Clearly no right can vest in the absence of an entity which is the subject of the vesting.

It must be admitted that the result and only result of this proviso in section 23 is to prevent the taking from incorporated cities and towns, jurisdiction over utilities. The contention of counsel for defendants that there is now vested in every potential or possible future incorporated city the right to regulate its utilities, leads to one of two conclusions, either the legislature can utterly defeat this interpretation of the section by repealing the law under which cities are incorporated and re-enacting this law with a specific inhibition against the control of utilities by cities incorporated thereunder, or that the legislature can not repeal the incorporation act because there is vested in cities which may be created thereunder the right to regulate utilities and the repeal of the statute would be an invasion of such right. Therefore, we hold that the San Gorgonio Water Company is a public utility under the jurisdiction of this Commission.

The San Gorgonio Water Company obtains its water from the Beaumont Land and Water Company under a contract dated October 26, 1907, by which the San Gorgonio Water Company acquired from the Beaumont Company thirty inches of water to be supplied only in that portion of the platted townsite of Beaumont lying north of Third street, west of Michigan avenue and east of Olive street, and in addition it acquired from the same company thirty inches of water for irrigation purposes only upon 300 acres of land belonging to the Beaumont Land and Water Company in the townsite of Beaumont lying north of the Southern Pacific railroad tracks, in the amount of not exceeding one inch of water under four-inch pressure to each ten acres of land, and under a contract dated May 4, 1911, the San Gorgonio Water Company acquired the right to purchase ten inches of water from said Beaumont Company for irrigation purposes solely within the platted limits of Beaumont, subject to prior appropriation of the Beaumont Land and Water Company of 218 inches. Of said last mentioned ten inches the San Gorgonio Water Company has purchased one inch.

The complaints against this company may be summarized as follows:

1. That it charges the customer for making the connection between the main and his property. (See Rule XI.)
2. That the company arbitrarily places meters on a service or permits the flat rate to apply. (See Rule XVII.)
3. That the rate for irrigating trees, lawns, gardens, etc., is so high as to be prohibitive. (See Rule I, attached to rate schedule.)

4. That the company, in some instances, locks the boxes containing the meters, thus preventing the customer from ascertaining how much water he is using.

5. That it makes a preliminary charge of \$50 per acre for a so-called water right before it will deliver irrigating water at its regular rates.

This Commission decided in Application No. 5, Hawthorne Electric and Water Company, Decision No. 356, that the company should make connections and install meters at its own expense, and for like reasons this rule should be applied to this company.

The determination of whether the flat rate is to be charged or the service metered and the meter rate charged should not be left entirely to the company. The consumer on principle has the right to select the lowest existing rate for a given service, but we believe that in this case the metered or measured service is the fairest to all concerned. Therefore, to expedite the metering of all services, we recommend that the putting in of a meter be made optional with either the consumer or the company.

The company introduced the testimony and reports of experts on the physical value of its plant. This evidence was checked by the experts of the Commission, who also made an inspection of the plant, and while the value found by the Commission's engineer is less than that found by the company's engineers, the report of the Commission's engineer shows clearly that the present rates of this company do not produce income sufficient to leave, after proper deduction for operating expenses, etc., more than a reasonable return on the plant value.

The only objection made by the consumers to the rates is that the domestic meter rate is too high to permit of irrigation for fruit and vegetables growing near their houses. Many of the consumers' lots contain one quarter acre, and it is their contention that they should have an irrigation rate where they desire to grow crops upon these lots. The service which is rendered to a consumer occupying a house upon a lot of this size, can not be considered as other than domestic service. The small incidental amount of irrigation which may be practiced by such a consumer, is not irrigation in the general conception of the term, or as practiced by the irrigation users. Such incidental domestic irrigation requires only comparatively small volumes of water, and should subsequently pay a higher or domestic rate over and above the large irrigation consumer who uses large volumes, and may consequently be entitled to a wholesale rate.

The customer has a right at any time to inspect the meter placed on his service and there should be a rule safeguarding this right.

The preliminary charge of \$50 per acre made by the company before it will deliver water for irrigating purposes is objectionable and should not be allowed.

If this is a public utility with water available, it must on demand furnish to a consumer water at its established rates. A public utility is such on the theory that every one under its system has a right to its service and this theory is violated when this right must be paid for. If it be contended that it is part of the rate it is objectionable, because any considerable advance payment of rates is unjust. First, it exacts payment in advance for a service which may never be performed or be only partially performed; next, it is a burden which should be spread over a period and not imposed at one time. Finally, if it be part of the rate, it does not appear in the schedule filed with this Commission and any charge, therefore, is unlawful.

A main of the San Gorgonio Water Company runs in the street bordering John Johnson's property, and he is now receiving domestic water service from this company. The president of the company testified that there was available for irrigation purposes under the system approximately six miner's inches of water.

We recommend that the San Gorgonio Water Company be ordered to furnish John Johnson with water for irrigation purposes, and to furnish irrigation water to lands under their system upon demand to the limit of water available, and that no charge be made for the right to receive such water other than the established rates.

The other defendant, the Beaumont Land and Water Company, was incorporated in August, 1907, and it has been distributing water for profit since. In view of the serious contention of the attorney for this company that it is not a public utility, we will briefly consider the status of this company.

Counsel argues that said company is not a public utility subject to the jurisdiction of this Commission because it is not serving the public with water, but is only serving water for use on lands owned or sold by it; that its articles of incorporation specifically limit it to such distribution of water and that it is only distributing water under contracts which fix the price to be paid for such service.

The articles of incorporation do not fix any rate or compensation to be paid for water, but limits the distribution of water by this corporation to lands owned or sold by it and for the purpose of supplying not exceeding 70 inches of water to the San Gorgonio Water Company under contracts made before the said articles of incorporation were filed.

It need not be decided in this case whether the Commission is bound by the limitation in the articles of incorporation providing that water shall be served only to land owned or sold by the corporation, because no complaint has been made against this company for failure or refusal to distribute water. The request of complainant Johnson is directed to both companies, and inasmuch as he may be more conveniently served by the San Gorgonio Water Company, it may be considered that his

request does not apply to the Beaumont Land and Water Company. This leaves for consideration and determination the question of whether this Commission may fix rates and control service on water distributed and to be distributed by the Beaumont Company, regardless of the contracts heretofore made with consumers.

This question has been squarely decided by this Commission in the matter of the application of James A. Murray and Ed Fletcher for an order authorizing and permitting an increase in the rentals, tolls and charges for water furnished by them and service rendered by them in furnishing water in the county of San Diego, State of California, Application No. 118, Decision No. 536.

This decision contains an exhaustive review of the authorities on this question and the determination of the Commission was that contracts, in which the price of water was fixed or attempted to be fixed, either by the payment of an original sum for a so-called water right, or for a fixed sum or monthly charge, or both, were subject to the power of this Commission to fix rates for the water furnished under such contract, regardless of the rates or compensation set out therein.

It may be urged as a distinction between the facts in that case and this, that in that case it was admitted by all parties that the corporation in question was a public utility, whereas in this case it is contended that the company is not a public utility, and the *Thayer* case is relied upon as authority for this contention.

We can dispose of this contention by calling attention to the fact that the *Thayer* case was instituted December 20, 1910, and at that time section 23 of the constitution as it now stands and the Public Utilities Act had not been enacted. Section 23, article XII of the constitution provides in part:

“Every private corporation and every individual or association of individuals owning, operating, managing or controlling \* \* \* any canal, pipe line, plant or equipment or any part of such canal, pipe line, plant or equipment within this state \* \* \* for the production, generation, transmission, delivery or furnishing of \* \* \* water \* \* \* is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation.”

The Public Utilities Act which became effective March 23, 1912, provides, subsection *x* of section 2:

“The term ‘water corporation’ when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever owning, controlling,

operating or managing any water system for compensation within this state.”

We may safely assume that the Supreme Court in its decision applied the law which it found in existence as of the date of the institution of the *Thayer* case and we may indulge the hope that upon a presentation to the Supreme Court of a case arising subsequent to the constitutional declaration of the people and the legislative enactment referred to above, the decision may be very different.

At any rate, we conceive it to be the duty of this Commission to give full force and effect to the solemn act of the people in adopting a constitutional provision and the carrying out of the provisions of such constitutional declaration by a legislative enactment, until the Supreme Court specifically rules otherwise.

Therefore, we hold that Beaumont Land and Water Company is a public utility corporation subject to the jurisdiction of this Commission.

The complaints against this company are:

1. That it charges the consumer for making a connection between the main and his property.
2. That the company arbitrarily places meters on a service or permits the flat rate to apply.
3. That the rate for irrigating trees, lawns, gardens, etc., is so high as to be prohibitive.

The rules of this company are practically identical with those of the San Geronio Water Company, and what is there stated about similar complaints against similar rules applies to this company, and we recommend that as to the three classes of complaints against this company above enumerated the same findings be made and the same rule applied as is recommended for the San Geronio Water Company.

We submit herewith the following form of order:

#### ORDER.

This Commission having made its order dated September 30, 1912, calling in question the rates and service of the San Geronio Water Company and the Beaumont Land and Water Company, and a public hearing having been duly held and being fully advised in the premises,

The Commission hereby finds as a fact that the following rules, regulations, and rates of the San Geronio Water Company and the Beaumont Land and Water Company are unjust and unreasonable, to wit:

1. Charging the consumers with the cost of installing meters and the making of connections between the mains of the company and the curb line of the street and where there is no curb line, the property line of the consumers.
2. Placing meters on the service of consumers only at the option of the company.



The Commission further finds as a fact that the San Gorgonio Water Company has sufficient water in its possession with which to serve John Johnson with water for irrigation purposes, and that such service will not unreasonably deplete the supply of present consumers.

The Commission further finds as a fact that the charge of the San Gorgonio Water Company of \$50 for the right to receive irrigating water from said company is unjust and unreasonable.

The Commission further finds as a fact that the following rules, regulations, and rates are just and reasonable rules, regulations, and rates to be adopted and charged by the San Gorgonio Water Company and the Beaumont Land and Water Company, to wit:

1. Meters shall be placed either at the request of the consumer or the companies, and such meters and their placement shall be at the expense of the companies.

2. Service connections between mains of the company and curb line of the street, and where there is no curb line, the property line of consumers, shall be made at the expense of the companies.

3. No charge shall be made to a consumer by the San Gorgonio Water Company for the right to receive water by such consumer.

The Commission further finds as a fact that with the exception of the items hereinabove declared to be unjust and unreasonable, the rules, regulations, and rates of the Beaumont Land and Water Company and the San Gorgonio Water Company as filed with the Commission on April 18, 1912, in pursuance of the Commission's General Order No. 15, are just and reasonable rules, regulations, and rates.

*It is hereby ordered* that within twenty days from the date of this order the San Gorgonio Water Company and the Beaumont Land and Water Company shall file with this Commission schedules of rules, regulations and rates in conformity with the findings hereinabove set out.

*It is hereby further ordered* that within thirty days from the date of this order the San Gorgonio Water Company furnish John Johnson with water for irrigation purposes under the rates, rules, and regulations herein ordered to be put in effect.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

## DECISION No. 609.

## IN THE MATTER OF THE APPLICATION OF MOUNT WHITNEY POWER AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING AN ISSUE OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS OF BONDS.

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Application No. 436.*Decided April 25, 1913.*

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Permission given applicant to issue additional bonds in the amount of \$250,000, the proceeds to be used in further construction work upon an hydroelectric project and for transmission and distribution lines that may be needed, the Commission finding that the financial condition of applicant is such that the additional bonds will not unreasonably encumber the property, the total outstanding obligations of applicant being, with the added encumbrance, substantially less than the value of its property.

*Jesse W. Lilienthal*, for Applicant.

## REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

This is an application of Mount Whitney Power and Electric Company for authority to issue \$250,000 of its first mortgage 6 per cent bonds for the purpose of building transmission and distributing lines and for continuing construction work upon its hydroelectric project on the Kaweah River. The transmission and distribution lines are required for the purpose of meeting applicant's growing business necessities. New business is being offered the company constantly and distribution lines must be built to accommodate these prospective patrons. The hydroelectric project on the Kaweah River was begun by Mount Whitney Power and Electric Company prior to the enactment of the Public Utilities Act. This project calls for a total expenditure of approximately \$1,400,000. Up to January 31, 1913, \$491,359.49 had been expended upon this work, leaving a balance of \$908,640.51 as the sum required to complete the enterprise.

The Kaweah hydroelectric project was considered by the Commission in connection with Application No. 287, in which Mount Whitney Power and Electric Company also asked for an order authorizing an issue of \$250,000 of bonds. A portion of those bonds were applied upon this hydroelectric construction. In Application No. 287 and in the order thereupon, the Commission considered also the financial affairs of Mount Whitney Power and Electric Company.

Subsequently, on February 26, 1913, complying with a request made by the Commission, Mount Whitney Power and Electric Company filed a detailed statement of the engineering work involved in the Kaweah

hydroelectric project under the title "Report on Generating and Transmission Extensions under Construction by Mount Whitney Power and Electric Company." In this report are set forth the details which go to make up the total of \$1,400,000.

The Commission is now asked to authorize a further issue of \$250,000 of bonds for Mount Whitney Power and Electric Company, the proceeds to be used in further construction work upon this hydroelectric project and for transmission and distribution lines that may be needed.

The bonds hereby applied for are to be issued under applicant's first mortgage, dated October 1, 1909, which provides that bonds may be issued up to only 80 per cent of the cost of the construction work and imposes other conditions designed to safeguard the indebtedness. And I am of the opinion that the financial condition of this company is such that it may properly be authorized to issue the bonds herein applied for without unreasonably encumbering its property under the principles heretofore announced by this Commission, the total outstanding obligations of this company being, with this added encumbrance, substantially less than the value of its property.

I recommend that the application be granted and submit herewith the following form of order:

**ORDER.**

Mount Whitney Power and Electric Company having applied to the Railroad Commission for an order authorizing an issue by said company of bonds of the amount of \$250,000 face value, payable on the 1st day of October, 1939, under the terms and conditions set out in its first mortgage to Bankers' Trust Company of New York, dated October 1, 1909, a copy of which is on file with this Commission and to which reference is hereby made, said bonds to bear interest at the rate of 6 per cent per annum; and

A hearing having been held and it appearing that the money to be obtained from the sale of said bonds is necessary to and reasonably required by the Mount Whitney Power and Electric Company for the acquisition of property, for the construction, completion, extension and improvement of its facilities; and

It further appearing that said purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income;

*It is hereby ordered* that Mount Whitney Power and Electric Company, the applicant herein, be and it is hereby authorized to issue \$250,000 face value of principal of said bonds, payable on the 1st day of October, 1939, under the terms and conditions set out in its first mortgage to Bankers' Trust Company of New York, dated October 1, 1909, said bonds to bear interest at the rate of 6 per cent per annum, on the following conditions and not otherwise:

- (1) Mount Whitney Power and Electric Company is hereby author-

ized to sell said bonds at not less than 95 per cent of their face value and accrued interest thereon.

(2) The proceeds from the sale of said bonds shall be used solely for the following purposes:

(a) For construction work upon the Kaweah River hydroelectric project and for such specific purposes in relation thereto and for such specific amounts as appear in "Report on Generating and Transmission Extensions under Construction by Mount Whitney Power and Electric Company," being a report on file with this Commission as an exhibit in Application No. 287.

(b) For distribution lines needed in the ordinary course of business development.

(3) Mount Whitney Power and Electric Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(4) The authority hereby given to issue such bonds shall apply only to bonds issued by Mount Whitney Power and Electric Company on or before the 1st day of April, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of April, 1913.

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DECISION No. 610.

CITY OF GLENDALE, A MUNICIPAL CORPORATION,

vs.

TITLE GUARANTEE AND TRUST COMPANY, TRUSTEE FOR  
THE GLENDALE CONSOLIDATED WATER COMPANY.

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Case No. 365.

*Decided April 28, 1913.*

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Upon complaint of the city of Glendale that charges made by defendant company to its consumers for service connections were unjust and unreasonable, defendant objected that the Commission had no jurisdiction over the subject-matter. It has heretofore been held by the Commission that such cities have jurisdiction to fix rates for water furnished consumers within such cities by water corporations, but that the Railroad Commission had jurisdiction, among other things, over the service and extensions of service of such corporations.

*Held*, The term "rates," as usually defined, is confined to the compensation paid at regular intervals to the utility corporations for the production of service. The definition of service then will include connections and the charge therefor.

W. E. Evans, for Complainant.

W. G. Cook and Willard Andrews, for Defendant.

#### REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is a complaint by the city of Glendale against the Title Guarantee and Trust Company, trustee for the Glendale Consolidated Water Company, in which it is alleged that said trustee is now operating a water system in the city of Glendale, and is furnishing the citizens thereof with water for domestic purposes.

The complaint is that said Title Guarantee and Trust Company charges consumers with the expense of service connections between its mains in the street and the curb line of the street on which the consumers' property abuts, and this Commission is asked to find that such charge is unjust and unreasonable, and that said company should make service connections at its own expense.

The defendant, Title Guarantee and Trust Company, objected to the consideration of this complaint on the ground that the Railroad Commission had no jurisdiction of the subject matter thereof, but that such jurisdiction resides in the city of Glendale.

A hearing was had on the question of law thus presented, at which representatives of the complainant and defendant appeared and presented arguments, whereupon the matter was submitted for the decision of the Commission.

The city of Glendale is a municipal corporation of the sixth class, and it has heretofore been held by this Commission that such cities have jurisdiction to fix the rates for water furnished consumers within such cities by water corporations, but that the Railroad Commission had jurisdiction, among other things, over the service and extensions of service of such corporations.

The sole question, therefore, before the Commission at this time is whether or not a charge made for a service connection is a rate, or part of a rate, or is a matter of service or extension of service.

This matter is not free from doubt. It may be argued that the charge made for a service connection is part of a rate, because it is a sum of money paid to the company as a compensation for obtaining service, or that such a charge is included in the jurisdiction of the city over rates because it will tend to increase rates, if this expense be borne by the company and added to capital on which the consumer must pay a rate sufficient to provide a reasonable return on the investment of the company.

This line of reasoning could be extended so that every act of a corporation resulting in the expenditure of money and affecting the rates to be charged consumers for utility service would be under the jurisdiction of the city, thus ousting this Commission of all jurisdiction over utility corporations in incorporated cities and towns of this State.

By giving the term "rates" its usual definition and meaning, we will confine it to the compensation paid at regular intervals to the utility corporations for the production of service. The definition of service then will include connections and the charge therefor.

Of course, it should be clearly understood that this Commission claims no jurisdiction over either the rates or service of utility corporations in cities which had on March 23, 1912, provided for such regulation in their charters. Therefore, I recommend that the Commission hold that the matter complained of herein is within the jurisdiction of the Railroad Commission, and that said complaint take its usual course to a hearing.

I submit herewith the following form of order:

**ORDER.**

A complaint having been filed with this Commission by the city of Glendale, a municipal corporation, against Title Guarantee and Trust Company, a corporation, trustee for the Glendale Consolidated Water Company, complaining against the charge alleged to be made by said defendant for service connections in the city of Glendale, California, and said defendant having objected to the consideration of said complaint on the ground that the Railroad Commission had no jurisdiction of the matters contained therein, and a hearing having been held upon said objection and the matter being submitted for the consideration of the Commission,

*It is hereby ordered* that the objection of defendant to the consideration of said complaint by this Commission be overruled, and that said complaint take its usual course to a hearing on the allegations contained therein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of April, 1913.

Decision Nos. 611 and 612, grade crossings; not printed. See end of volume.

DECISION No. 613.

POWELL BROS. CONSTRUCTION COMPANY

*vs.*

SOUTHERN PACIFIC COMPANY.

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Case No. 334.

*Decided April 28, 1913.*

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REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled proceeding having on April 22, 1913, made written request to this Commission that the above entitled proceeding be dismissed,

*It is hereby ordered* that the complaint in the above entitled proceeding be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 28th day of April, 1913.

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DECISION No. 614.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT ITS TRACK AT GRADE ACROSS THE TRACKS OF THE CEMENT, TOLENAS AND TIDEWATER RAILROAD COMPANY NEAR CEMENT, COUNTY OF SOLANO, CALIFORNIA.

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Application No. 459.

*Decided April 28, 1913.*

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Upon application of Northern Electric Railway Company, under section 43 of the Public Utilities Act, for permission to construct its main line electric road at grade across the tracks of Cement, Tolenas and Tidewater Railroad Company near Cement, Solano County, it appearing that an avoidance of a crossing at grade at said point is reasonably practicable, and that an undergrade crossing was desired by said roads, order entered approving construction of undergrade crossing upon prescribed terms and conditions, said railroads having agreed upon a division of construction costs. Applicant permitted to install and use a temporary crossing at grade pending the completion of the undergrade construction.

*T. T. C. Gregory*, for Applicant.

*F. D. Madison*, for Cement, Tolenas and Tidewater Railroad Company.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

On March 20, 1913, Northern Electric Railway Company filed with the Commission an application for permission to construct its main line track at grade across the tracks of Cement, Tolenas and Tidewater Railroad Company near Cement, Solano County, California. No agreements or other evidence were filed indicating that Cement, Tolenas and Tidewater Railroad Company agreed to the crossing. Although the application was for a crossing "at grade," section III thereof contained the following statement: "That applicant believes that a separation of grades at this point would be desirable, and is willing to join in such separation under such terms and conditions as may be prescribed by the Railroad Commission of the State of California."

After due notice to all interested parties a public hearing was held before the Commission on April 3, 1913. This hearing was adjourned to April 9, 1913, and thereafter to April 12, 1913, in order that all of the pertinent facts relating to the crossing, including the reasonableness and practicability of avoiding a grade crossing, could be ascertained by the Commission, and in order that the interested parties might be given the opportunity to come to terms that would be satisfactory to the Commission.

The Northern Electric Railway Company is now constructing its line of railway between the cities of Sacramento and Vallejo and desires to cross the tracks of Cement, Tolenas and Tidewater Railroad Company at Cement station near the manufacturing plant of the Pacific Portland Cement Company. At the point selected for the crossing Cement, Tolenas and Tidewater Railroad Company has two (2) tracks, viz, its main line and a siding which it will be necessary for applicant to cross. The proposed point of crossing is about seven hundred (700) feet east of the yard of Cement, Tolenas and Tidewater Railroad Company at Cement, where a large amount of switching of trains and cars is done, and is also about three hundred (300) feet west of the track scales of the Cement, Tolenas and Tidewater Railroad Company, upon which all loaded cars are weighed.

The proposed point of crossing is objectionable from the standpoint of the Cement, Tolenas and Tidewater Railroad Company, and this company insisted at the hearings that applicant should relocate its line and cross the Cement, Tolenas and Tidewater Railroad at a point about one half ( $\frac{1}{2}$ ) mile east. This change, however, in my opinion, would be decidedly inadvisable from the standpoint of both applicant and the traveling public and objectionable on the ground that it would result in the breaking of a long tangent and also introduce additional distance in the line of applicant. Such change would not result in



economy in the construction of a grade crossing nor be sufficiently less dangerous to warrant its additional cost.

Cement, Tolenas and Tidewater Railroad Company also insists that a grade crossing with its tracks should be avoided if the crossing were made at the point proposed. The principal question in regard to which there was controversy was the proper division of the expense of either an undergrade or overhead crossing between the parties. Investigation by the engineering department of the Commission, and also the testimony submitted, shows conclusively that a grade crossing can be avoided at a reasonable cost, and that the undergrade form of crossing is most economical and desirable from every standpoint. The main question for the Commission to decide, therefore, is the proper proportion of the expense of such undergrade crossing which each party should assume. The testimony shows that the cost of a grade crossing protected by a standard interlocking device, such device as the Commission would approve, would cost in the neighborhood of \$12,000. If a grade crossing were permitted, owing to the volume and character of the traffic which would be transported over both lines of railroad, an interlocking device would be required by the Commission for its protection; hence, when considering the undergrade crossing as against a grade crossing, we will assume that the grade crossing would be interlocked. The testimony shows that the undergrade crossing will probably involve an expenditure of about \$42,000. In my opinion, therefore, the Commission should require that applicant shall construct an undergrade crossing, the cost thereof to be borne equally by applicant and Cement, Tolenas and Tidewater Railroad Company, after the estimated cost of the grade crossing interlocked, viz, \$12,000, has been deducted therefrom, the applicant to assume such estimated cost of the grade crossing interlocked. In other words, if the undergrade crossing actually costs \$42,000, the estimated cost of the grade crossing interlocked, viz, \$12,000, should be deducted from this amount and the remaining \$30,000 divided equally between the parties, resulting in applicant bearing \$27,000 of the cost of such undergrade crossing and Cement, Tolenas and Tidewater Railroad Company bearing \$15,000. This division of expense between the parties, in my opinion, is just and reasonable and should be ordered by the Commission.

The testimony shows that it will require approximately one (1) year to construct the undergrade crossing. Meanwhile, applicant should not be prevented from completing and placing in operation its line of railroad between Sacramento and Vallejo, and, therefore, should be permitted to construct at its own expense a temporary crossing at grade at such point in the vicinity as will not interfere with the construction of the undergrade crossing and be permitted to operate same until the

undergrade crossing is completed ready for operation. I, therefore, submit the following form of order:

**ORDER.**

Northern Electric Railway Company, a corporation, having on March 20, 1913, filed with the Commission an application for permission to construct its main line track at grade across the tracks of Cement, Tolenas and Tidewater Railroad Company near Cement, Solano County, California, and public hearings having been held upon the application at which all interested parties were duly represented, and testimony having been taken concerning the matters contained in the application, including the practicability of avoiding a grade crossing, and it appearing that both applicant and Cement, Tolenas and Tidewater Railroad Company agree, and the physical conditions indicate that it is reasonable and practicable to avoid a grade crossing at said proposed point of crossing, and that an undergrade crossing should be constructed by applicant under the tracks of Cement, Tolenas and Tidewater Railroad Company; and it further appearing that the proper division of the cost of such undergrade crossing between the parties is to deduct from its total actual cost the cost of a grade crossing at the same point protected by a standard interlocking device, which cost is estimated to be \$12,000, and to divide the remainder equally between the parties, applicant bearing the cost of such grade crossing interlocked; and it further appearing that applicant should be granted permission to construct its track temporarily at grade across the tracks of Cement, Tolenas and Tidewater Railroad Company and be permitted to operate over same until the completion of the undergrade crossing,

*It is hereby ordered* by the Railroad Commission of the State of California that Northern Electric Railway Company be and it is hereby directed to construct an undergrade crossing for its track under the tracks of Cement, Tolenas and Tidewater Railroad Company near Cement, Solano County, California, at the point selected for a grade crossing, subject to the following conditions, viz:

(1) Said undergrade crossing shall be constructed to conform to the requirements of General Order No. 26 of this Commission.

(2) The maximum grade of approach of applicant's track to the undergrade crossing shall not be less than one (1) per cent.

(3) Said undergrade crossing shall be constructed in accordance with plans prepared jointly by applicant and Cement, Tolenas and Tidewater Railroad Company, and shall be submitted to this Commission for its approval within ninety (90) days after the date of this order. Said crossing shall be completed ready for operation of trains within one (1) year after the date of this order. Should the parties be unable to agree upon satisfactory plans for the crossing, each party shall submit such plans as it may have made for same to the Commis-

sion, and the Commission will direct the construction to proceed in accordance with either plan or in accordance with such amended plan as it may issue or approve.

(4) The expense of constructing the undergrade crossing shall be divided between applicant and the Cement, Tolenas and Tidewater Railroad Company as follows: from the total actual cost of the undergrade crossing shall be deducted the sum of \$12,000 which shall be paid by applicant. The remainder of such cost shall be divided equally between applicant and Cement, Tolenas and Tidewater Railroad Company.

(5) The cost of the undergrade crossing shall include the cost of the necessary excavations, together with the cost of such overhead bridges as may be necessary for the tracks of Cement, Tolenas and Tidewater Railroad Company, and include the cost of maintaining the tracks of the latter company at all times in condition for the operation of its trains and cars thereover and also include such cost, including bridges and grading, of constructing public highways over the tracks of applicant within the limits of the excavations; such cost shall not include the laying and ballasting of tracks of applicant nor the cost of laying the tracks and installing the frogs for the temporary crossings hereinafter provided for;

*And it is further ordered* that the cost of hereafter maintaining the undergrade crossing shall be borne by applicant, except that Cement, Tolenas and Tidewater Railroad Company shall maintain at its own expense its track over the undergrade crossing, including the necessary bridges or girders but not the abutments and foundations thereof;

*And it is further ordered* that pending the completion of said undergrade crossing applicant is hereby given permission to at once install and operate its cars and trains over temporary crossings at grade across the tracks of Cement, Tolenas and Tidewater Railroad Company at such point in the vicinity of the proposed crossing as will not interfere with the construction of said undergrade crossing. All motors, trains, and cars of applicant and of Cement, Tolenas and Tidewater Railroad Company, before passing over such temporary crossings, shall come to a full stop within fifty (50) feet thereof, and shall not pass over the crossings until it has been ascertained that it is safe to do so;

*And it is further ordered* that the Commission reserves the right to make such further orders relating to the construction, maintenance, operation, and protection of said crossings when, in its opinion, public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of April, 1913.

## DECISION No. 615.

## IN THE MATTER OF THE APPLICATION OF CITRUS BELT GAS COMPANY TO BUY A SYSTEM OF GAS PLANTS AND TO ISSUE STOCKS, BONDS AND NOTES, AND OF P. J. DUBBELL TO SELL A SYSTEM OF GAS PLANTS.

Application No. 359.

*Decided April 28, 1913.*

Creditors of San Bernardino Valley Gas Company having purchased the properties of said company at bankruptcy sale on July 30, 1912, incorporated the Citrus Belt Gas Company, the applicant herein, to take over and operate the gas works and systems.

The San Bernardino Valley Gas Company in 1909 acquired the gas properties of Redlands Gas Company, Home Gas and Electric Company of Redlands, Home Gas and Lighting Company of San Bernardino, Corona Gas and Electric Company, and Colton Gas Company at an appraised valuation of \$602,700, and paid for same \$16,000 in cash, \$319,500 in promissory notes, and by assuming bonds of the constituent companies amounting to \$267,200. In addition to the above indebtedness of \$586,700, bonds of one of the constituent companies to the amount of \$84,000 had been pledged as collateral security to notes. The plan of creditors' reorganization, as submitted for approval, called for the assumption by applicant of the \$267,200 underlying bonds; the discharge in full of creditors' claims amounting to \$545,196.54 by the issue of \$444,400 income bonds, \$100,796.54 promissory notes and \$444,400 capital stock. Interest, accumulated largely during the period of bankruptcy, was included in the creditors' claims. By reason of the foregoing, the initial total fixed liabilities of applicant would amount to \$812,396.54. The value of said properties, including certain securities of L. C. Power Company, deemed, for the purpose of this application, to be between \$510,000 and \$550,000.

*Held.* It is manifest that, under the proposed plan of reorganization, Citrus Belt Gas Company would be insolvent from the beginning. If San Bernardino Valley Gas Company could not pay interest on \$586,700 of obligations, certainly Citrus Belt Gas Company, with the same properties, can not in reason be expected to earn interest on the same amount of obligations and on \$225,696 in addition. Obviously, the only possible way in which it can earn the interest is to charge exorbitant rates to its consumers, rates which must be based on fictitious valuations. The proposed plan of reorganization, therefore, would bring about conditions directly adverse to the declared policy of the State as expressed in the Public Utilities Act. The desire to issue an overabundance of notes and bonds is an effort to bridge over with securities the accumulation of years of loss and apparent mismanagement. If the value of this property is not greater than \$550,000 no alchemy of finance can produce a value of \$812,000. And there are other weighty reasons that render the proposed plan of reorganization unfortunate. The properties have been allowed to depreciate. The company has competition in the rich territory of San Bernardino, and it is in evidence that natural gas may be introduced in the field served by applicant. It is also in evidence that Citrus Belt Gas Company must make certain extensions, and once heavily overloaded with obligations it would find itself in dire straits to borrow money necessary for these additions to its property.

*Held.* The item of interest included in the creditors' claims represents the accumulation of unpaid interest mainly during bankruptcy. The payment of this item of defaulted interest by bonds would mean the capitalization of bankruptcy.

This is not sound in principle. It is based on a theory which places a higher valuation on failure than success.

*Held*, That a proper and satisfactory reorganization of these properties under the ownership of Citrus Belt Gas Company will require, first, that it assume the indebtedness represented by the underlying bonds in the sum of \$267,200; second, that it assume the indebtedness represented by the \$84,000 of Home Gas and Electric Company collateral bonds; third, that it issue promissory notes to make payments upon obligations incurred or upon claims outstanding in a sum not to exceed \$20,000 and to discharge smaller claims among the "accounts payable" in a sum not to exceed \$5,000, making a total of \$25,000 of such promissory notes; and, fourth, that it issue its shares of stock to such other claimants as may be entitled to share in the property, to wit, of the amount of \$200,000 par value.

*H. L. Carnahan*, for Applicants.

*Edgar C. Pratt*, for Bondholders.

#### REPORT OF THE COMMISSION.

*GORDON, Commissioner.*

This is an application by Citrus Belt Gas Company to purchase gas plants now held in the name of P. J. Dubbell as trustee, embracing two plants in Redlands, one in San Bernardino, one in Colton and one in Corona; and by P. J. Dubbell to sell the same; and by Citrus Belt Gas Company to issue stock, bonds and notes for the purpose of acquiring these properties. Citrus Belt Gas Company applies for authority to issue \$444,400 in stock, \$444,400 of five per cent thirty-year cumulative income bonds; \$100,796.54 in notes; and for purposes of collateral security, \$98,000 of five per cent thirty-year cumulative income bonds. The notes in the amount of \$100,796.54 consist of \$84,000 in 6 per cent promissory notes due serially from 1917 to 1922; a promissory note for \$7,000 due in one year with interest at 6 per cent; a promissory note for \$7,000, due in two years with interest at 6 per cent, and promissory notes for the amount of \$2,796.54 due in five years with interest at 5 per cent.

It is proposed by Citrus Belt Gas Company to issue the stock and bonds and notes to P. J. Dubbell in exchange for the gas plant properties under an agreement by which Mr. Dubbell is to distribute the stock and bonds and notes among those persons for whom he is acting as trustee under a "plan of reorganization" previously agreed upon. Subsequent to the hearing in this case Mr. John M. Gardiner filed a protest and supplemental protest, which have been duly considered by the Commission.

A determination of the issues presented to the Commission in this matter requires a review of the facts which have brought about this application.

In 1909 Mr. John M. Gardiner organized the San Bernardino Valley Gas Company. The San Bernardino Valley Gas Company proceeded to acquire the following gas properties: Redlands Gas Company (called

“The Edison Company”), Home Gas and Electric Company of Redlands, Home Gas and Lighting Company of San Bernardino, Corona Gas and Electric Company and Colton Gas Company.

San Bernardino Valley Gas Company took over these properties at an appraised valuation of \$602,700. It assumed bonds against these properties in the sum of \$267,200; notes to the amount of \$319,500, and paid \$16,000 in cash. The bonds as assumed were:

|  |              |
|--|--------------|
| Home Gas and Lighting Company of San Bernardino----- | \$40,000 00  |
| Home Gas and Electric Company of Redlands-----       | 113,700 00   |
| Redlands Gas Company-----                            | 50,000 00    |
| Redlands Gas Company-----                            | 48,500 00    |
| Colton Gas Company-----                              | 15,000 00    |
| Total -----  | \$267,200 00 |

In addition, bonds of Home Gas and Electric Company of Redlands to the amount of \$84,000 had been pledged as collateral securities for notes issued by said company. When San Bernardino Valley Gas Company took over the properties of Home Gas and Electric Company of Redlands a secured note was given for the equity in the property over the bonds with the understanding that, as the note was paid, the pledged bonds of Home Gas and Electric Company to the amount of \$84,000 were to be called in. As will appear later, these \$84,000 of bonds were never redeemed.

San Bernardino Valley Gas Company had an authorized stock issue of \$1,500,000 and an authorized bond issue in like amount. Of the \$1,500,000 of bonds, San Bernardino Valley Gas Company made the following disposition:

|  |                |
|--|----------------|
| Bonds not certified-----                                 | \$598,500 00   |
| Held for refunding-----                                  | 268,000 00     |
| Bonds in treasury-----                                   | 35,500 00      |
| Sold or exchanged for property-----                      | 186,000 00     |
| Pledged as collateral security for promissory notes----- | 414,000 00     |
| Total -----  | \$1,500,000 00 |

It appears from the facts presented that San Bernardino Valley Gas Company, after assuming control of the consolidated companies, found itself the owner of properties which it had appraised at \$602,700 and with fixed liabilities in the sum of \$586,700.

From the appraisals made for San Bernardino Valley Gas Company, it would appear that it began business after the consolidation of the five gas properties with the following assets and liabilities:

*Assets (as appraised by company).*

|  |              |
|--|--------------|
| Plant of Home Gas and Electric Company of Redlands and Redlands Gas Company----- | \$374,200 00 |
| Plant of Home Gas and Lighting Company of San Bernardino-----                    | 137,500 00   |
| Plant of Colton Gas Company-----   | 56,000 00    |
| Plant of Corona Gas and Electric Company-----                                    | 35,000 00    |
| Total (appraised value of properties)-----                                       | \$602,700 00 |

| <i>Liabilities.</i>  |                     |
|--|---------------------|
| Underlying bonds, assumed-----   | \$267,200 00        |
| Note given to Home Gas and Electric Company of Redlands<br>for equity in property over bonds-----      | 151,000 00          |
| Note given Home Gas and Lighting Company of San Ber-<br>nardino for equity in property over bonds----- | 92,500 00           |
| Note given Colton Gas Company for properties-----  | 41,000 00           |
| Note given Corona Gas and Electric Company for properties--  | 35,000 00           |
| <b>Total -----</b>   | <b>\$586,700 00</b> |

It is probable that there were other liabilities in the form of expense incurred during the process of consolidation.

The consolidated company continued to operate until 1911, when it defaulted in the payment of the interest on its bonds and the creditors proceeded to have it declared a bankrupt.

On May 29, 1911, San Bernardino Valley Gas Company was adjudged a bankrupt, and on August 8, 1911, Los Angeles Trust and Savings Bank was selected as trustee. The property was operated in bankruptcy until the following summer. On June 29, 1912, the referee in bankruptcy authorized the sale of the properties of San Bernardino Valley Gas Company at public auction. In the meanwhile the creditors had united, and under an authorization of 95 per cent of the claims against the company had formed a creditors' committee. On July 30, 1912, the properties of the bankrupt were sold at public auction to Mr. P. J. Dubbell, acting as trustee for the creditors, for the sum of \$470,000.

In conformity with the order of the court the properties were turned over to P. J. Dubbell on August 17, 1912.

In November, 1911, the creditors, through their committee, had organized Citrus Belt Gas Company, for the purpose eventually of taking over the gas properties.

Citrus Belt Gas Company has an authorized stock issue of \$1,500,000, and an authorized issue of \$1,500,000 of 5 per cent thirty-year cumulative income bonds. It issued only enough stock to qualify its directors and has issued no bonds. Application is now made by Mr. P. J. Dubbell and Citrus Belt Gas Company for authority to transfer the gas properties now held by Mr. P. J. Dubbell to Citrus Belt Gas Company and by Citrus Belt Gas Company for authority to issue to Mr. P. J. Dubbell in exchange for these properties its stock, bonds and notes in accordance with a definite plan of reorganization under which Mr. Dubbell is to turn over the stock, bonds and notes of Citrus Belt Gas Company to the creditors of the bankrupt San Bernardino Valley Gas Company, who shall thereby become the holders of the stock, bonds and notes of Citrus Belt Gas Company.

The plan of reorganization as submitted for the Commission's approval provides for the assumption by Citrus Belt Gas Company of the underlying bonds in the sum of \$267,200 and for the recogni-

tion in full of the creditors' claims in the sum of \$545,196.54. It provides that these creditors are to receive income bonds to the amount of \$444,400 and promissory notes to the amount of \$100,796.54, making a total of \$545,196.54, and in addition, stock to the amount of \$444,400.

The creditors' claims consist of the following:

|   |                     |
|---|---------------------|
| Bonds of San Bernardino Valley Gas Company----- | \$187,000 00        |
| Notes payable -----                             | 285,866 09          |
| Accounts payable -----                          | 14,140 54           |
| Interest on bonds-----                          | 19,087 50           |
| Interest on notes-----                          | 39,102 41           |
| <b>Total -----</b>                              | <b>\$545,196 54</b> |

The bonds of San Bernardino Valley Gas Company were sold to investors and exchanged for property. Between 90 per cent and 95 per cent of the notes payable represent amounts due on the purchase of the five gas plants. The accounts payable represent indebtedness incurred in the purchase of supplies. The interest on bonds and notes represents the unpaid interest on the bonds and notes which has accumulated largely during the period of bankruptcy.

A brief analysis of the proposed plan of reorganization is essential to a proper consideration of the issues herein presented. With the plan of the company to pay certain items this Commission is not concerned, and for that reason this discussion will include only those features for which the approval of this Commission is required under the Public Utilities Act.

It is proposed in the plan of reorganization to pay dollar for dollar, with interest during bankruptcy, all claims against the defunct San Bernardino Valley Gas Company. After providing for the payment of certain minor claims in cash, the plan as submitted to the Commission proposes:

(1) That all unsecured claims for less than \$100 each be paid in notes of Citrus Belt Gas Company, bearing 5 per cent interest, due March 1, 1917.

(2) That all unsecured claims exceeding \$100 each be paid in bonds of Citrus Belt Gas Company, at par, and that 5 per cent promissory notes of Citrus Belt Gas Company be given for the fractions of \$100.

(3) That the indebtedness to Home Gas and Electric Company of Redlands, placed at \$130,102.46 be paid as follows: \$84,000 in 6 per cent promissory notes, due serially from March 1, 1917, to March 1, 1922; \$7,000 in the form of a one-year promissory note with 6 per cent interest; \$7,000 in the form of a two-year promissory note with 6 per cent interest; \$32,100 in 5 per cent income bonds, making a total of \$130,100. The balance of \$2.46 represents the fraction to be met in the form of a five-year note.



(4) That the holders of all other secured promissory notes of San Bernardino Valley Gas Company be paid principal and interest in 5 per cent income bonds of Citrus Belt Gas Company at par, promissory notes with 5 per cent interest to be issued for the fraction of \$100.

(5) That the holders of bonds of San Bernardino Valley Gas Company be paid principal and interest in full in 5 per cent income bonds of Citrus Belt Gas Company at par, and 5 per cent five-year promissory notes for the fractions of \$100.

I shall now proceed to consider the present financial condition of these properties as they exist in the possession and control of Mr. P. J. Dubbell, the trustee for the creditors.

The properties consist of the same gas plants which Mr. Gardiner consolidated into one company. They serve the cities of Redlands, San Bernardino, Colton and Corona and contiguous territory with gas. Among the assets are certain securities of the Lytle Creek Power Company to which I shall subsequently refer with greater detail. These gas properties were consolidated on an appraisal as previously stated of \$602,700 and of their present value I shall have more to say later. It appears that in the sale of these properties to Mr. P. J. Dubbell specific recognition was given to the underlying bonds in the sum of \$267,200, and to the claims represented by \$84,000 of bonds of Home Gas and Electric Company of Redlands, which had been pledged as collateral security for note indebtedness. That the sale of the properties to Mr. P. J. Dubbell for \$470,000 entailed a recognition of this underlying indebtedness in the total sum of \$351,200 is clearly shown by the evidence. The certificate of conveyance from Los Angeles Trust and Savings Bank to Mr. P. J. Dubbell sets out clearly that the transfer is made subject to these obligations. Citrus Belt Gas Company filed evidence with this Commission also tending to establish the complete recognition of this indebtedness. I find, therefore, that as the properties now stand with title resting with Mr. P. J. Dubbell as trustee they are encumbered with indebtedness to the amount of \$351,200. Mr. P. J. Dubbell, as owner of these properties as trustee, has paid \$470,000 for them and possesses them subject to an indebtedness of \$351,200.

These properties operated by the trustee during the calendar year of 1912 showed earnings and expenses for the year as follows:

|                                      |             |              |
|--------------------------------------|-------------|--------------|
| Gross gas revenue-----               |             | \$112,277 32 |
| Manufacturing expenses-----          | \$40,889 02 |              |
| Distribution expenses-----           | 9,421 96    |              |
| General expenses-----                | 13,093 55   |              |
| Taxes-----                           | 4,364 94    |              |
| General office expenses-----         | 5,069 78    | 72,839 25    |
| Net operating gas revenue-----       |             | \$39,438 07  |
| Net profit on merchandise sales----- |             | 1,774 14     |
| Operating revenue-----               |             | \$41,212 21  |
| Non-operating revenue-----           | \$552 00    |              |
| Interest on bonds-----               | 900 00      |              |
| Interest on notes-----               | 1,911 12    |              |
| Discount-----                        | 44 80       |              |
| Total net revenue-----               |             | \$44,620 33  |
| Total net revenue-----               |             | \$44,620 33  |

Having considered the condition of these properties as they exist at this time under the trustee, I shall now inquire into the conditions that the proposed plan of reorganization aims to bring about, and for that purpose it is essential at the beginning to determine as far as possible the value of these properties. While expert testimony of competent engineers frequently shows a wide range in fixing values, we are somewhat fortunate in this case, in that the engineering estimates are not very wide apart.

There are, as a beginning, two valuations made by Mr. Z. T. Bell, engineer for San Bernardino Valley Gas Company and who is also acting as engineer for the trustee. Mr. Bell has made a careful examination of these properties and has submitted to the Commission two estimates. At the time of the consolidation of these properties in 1909 Mr. Bell appraised the physical properties at \$602,700, and in a subsequent valuation in August, 1912, Mr. Bell appraised these same physical properties at \$564,749.11. Mr. Bell explained the difference in these valuations by stating that he was more particular in the second estimate to get down to actual valuation and that he was more conservative in his method.

Mr. E. S. Moulton, president of Citrus Belt Gas Company and a member of the reorganization committee, assumed a valuation of \$600,000 to which he added \$300,000 for "going concern" value. Mr. Moulton's figures are clearly based on the estimates of Mr. Bell, and he added \$300,000 as a value on which he said he believed the property could be made to pay. In proof of this Mr. Moulton referred to the statement of earnings for the calendar year of 1912, showing net income of \$44,620.33. Mr. Moulton apparently assumes that as this figure is approximately 5 per cent of \$900,000 the property should be considered worth \$900,000. However, he neglected to figure depreciation, which alone would dispose of at least \$15,000 to \$20,000 of this income. If depreciation were deducted in the sum of only \$20,000

the property would show net earnings of approximately \$25,000, or 5 per cent on \$500,000.

Mr. Moulton's theory is the familiar one that leads to the circle of logic that value is based on earnings and in turn that earnings are based on value. As a matter of fact the earnings on these properties are subject to regulation by state and municipal authorities, and it appears that the company's rates have been subject to revision within the city of San Bernardino. If we pursue the theory advanced by Mr. Moulton to its ultimate conclusion it must lead eventually to this: that excessive rates make excessive values, and a utility, once having put excessive rates into effect, could claim thereafter excessive value upon which for all time to come excessive rates must be permitted. To permit utilities to construct values by this process would be merely to license them to capitalize exorbitant rates. I do not find any merit in the contention that these properties have a "going concern" value of \$300,000. On the contrary I am inclined to believe that, through failure to maintain a proper depreciation account, these properties have deteriorated rather than increased in value.

We have Mr. Moulton's estimate of 5 per cent per annum as a proper depreciation rate and it appears that the depreciation has not been charged off for three years. I find that a depreciation charge of  $3\frac{1}{2}$  per cent carried over the time for which no depreciation has been accumulated would reduce Mr. Bell's second estimate to approximately \$500,000. A check made by the engineering department of the Commission discloses certain features of Mr. Bell's appraisal that are somewhat high. The revision of the estimate by the Commission's engineering department would tend to lower Mr. Bell's valuation by approximately \$23,000. We have then this result:

Mr. Bell's first valuation, \$602,700.

Mr. Bell's second estimate, \$564,749.11.

Mr. Bell's second valuation, less depreciation, \$500,000.

Mr. Bell's valuation as revised by the Commission's engineers,  
less depreciation, \$477,000.

Price in bankruptcy proceedings, \$470,000.

I am inclined to believe that the appraisal representing the most accurate valuation of these properties are to be found in Mr. Bell's valuation, with depreciation to date, in the sum of \$500,000 and the revision as made by the Commission's engineers in the sum of \$477,000. I believe these figures to be liberal to the company. They are based upon the conclusions of its own engineer as to a fair measure of the value before depreciation for the last three years had been charged off. Mr. Bell and Mr. Moulton both concede that there has been such a depreciation. I am of the opinion that the revision as submitted by the engineers of the Commission is proper and fair. I find, further,

that the price of \$470,000, at which the properties were sold in bankruptcy proceedings, may be taken in some degree as a measure of their value. The Supreme Court in the case of the *San Diego Land and Town Company vs. James A. Jasper*, 189, U. S. 439, said that the foreclosure price was often more important evidence as to value than the original cost.

If this were a rate-fixing inquiry I would proceed to find a definite value for this property, but for the present purpose it is sufficient to find an approximate figure. It is clearly in evidence that the value of these physical properties lies between \$470,000 and \$500,000.

I find among the assets held by P. J. Dubbell as trustee certain securities of Lytle Creek Power Company. Testimony taken at the hearing shows that these securities have a value that may be estimated approximately from \$40,000 to \$50,000. In the absence of a definite figure it may be assumed that \$40,000 to \$50,000 will be added to the valuation as given above. It is the intention to invest the money received from the sale of Lytle Creek Power Company securities in additions and betterments to the gas property. It may be assumed, therefore, that a valuation may be given the properties as they will stand after these additions have been made, ranging from \$510,000 to \$550,000.

We may begin, therefore, a consideration of the affairs of Citrus Belt Gas Company under the proposed plan of reorganization by assuming assets of \$510,000 to \$550,000. Under the proposed plan of reorganization the company's indebtedness will consist of the underlying bonds in the sum of \$267,200, and in the recognition of all outstanding claims at full value in the amount of \$545,196.54. Assuming for the present the maximum valuation of the properties, a statement of the assets and liabilities of Citrus Belt Gas Company under the proposed plan of reorganization would show the following:

| <i>Liabilities.</i>  |              |
|--|--------------|
| Underlying bonds assumed:  |              |
| Home Gas and Electric Company of Redlands 6 per cent bonds       | \$113,700 00 |
| Redlands Gas Company 6 per cent bonds                            | 50,000 00    |
| Redlands Gas Company 5 per cent bonds                            | 48,500 00    |
| Home Gas and Lighting Company of San Bernardino 5 per cent bonds | 40,000 00    |
| Colton Gas Company 5 per cent bonds                              | 15,000 00    |
| Total  | \$267,200 00 |
| Income bonds of Citrus Belt Gas Company, 5 per cent              | 444,400 00   |
| Promissory notes, 6 per cent                                     | 98,000 00    |
| Promissory notes, 5 per cent                                     | 2,796 54     |
| Total liabilities  | \$812,396 54 |
| <i>Assets.</i>   |              |
| Plant value  | \$550,000 00 |
| Deficit in assets  | \$262,396 54 |

This tabulation takes no account of stock which the applicant proposes to issue in the sum of \$444,400. It shows a surplus of liabilities over assets of \$262,396.54.

It is manifest that, under the proposed plan of reorganization, Citrus Belt Gas Company would be insolvent from the beginning. This is a conclusion from which I can see no escape. In fact, it appears so clear that the proposed plan would create another bankrupt that I am forced to conclude that the plan as worked out cannot be successfully put into operation.

Assuming that Citrus Belt Gas Company were given authority to put the proposed plan of reorganization into effect we may take as an index of its earning capacity the report for the calendar year of 1912. This shows a net income of \$44,620.33. From this must be deducted depreciation, which at 4 per cent on \$500,000 of depreciable property would be \$20,000, leaving a balance of \$24,620.33 to be applied as interest on the outstanding securities. The annual interest on these securities would be as follows:

|   |                    |
|---|--------------------|
| On \$267,200.00 of underlying bonds -----           | \$14,977 00        |
| On \$444,400.00 of income bonds at 5 per cent ----- | 22,220 00          |
| On \$98,000.00 promissory note at 6 per cent -----  | 5,880 00           |
| On \$2,796.54 promissory note at 5 per cent -----   | 130 82             |
| <b>Total -----</b>                                  | <b>\$43,236 82</b> |

The company would have \$24,620.33 available to pay the accumulated interest of \$43,236.82. Furthermore, under the proposed plan of reorganization, one of the promissory notes in the sum of \$7,000 falls due at the end of the first year. No method has been provided to meet this payment, and unable to pay the full interest on its bonds, the company, as a matter of course, would not be in position to meet the \$7,000 note falling due.

If it was intended under this proposed plan of reorganization to better the financial condition surrounding these properties, apparently the object in view has not been attained. It is in evidence that San Bernardino Valley Gas Company, after the consolidation of the various gas plants, showed physical properties practically identical with those which it is now proposed to turn over to Citrus Belt Gas Company. The outstanding obligations with which San Bernardino Valley Gas Company burdened these properties amounted to \$586,700. It is now proposed by Citrus Belt Gas Company to take the same properties and burden them with fixed obligations in the sum of \$812,396.54. In other words, it is proposed to take these same properties which collapsed under a load of \$586,700 and superimpose upon them, not only the same load, but \$225,696 in addition. If San Bernardino Valley Gas Company could not pay interest on \$586,700 of obligations, certainly Citrus Belt Gas Company, with the same properties, can not in reason be expected to earn interest on the same amount of obli-

gations and on \$225,696 in addition. Obviously, the only possible way in which it can earn the interest is to charge exorbitant rates to its consumers, rates which must be based on fictitious valuations.

In addition to this accumulation of indebtedness it is proposed also to issue stock to the amount of \$444,400. That this stock, so issued, would represent no value whatever is admitted by the applicant in this case.

The proposed plan of reorganization, therefore, would bring about conditions directly adverse to the declared policy of the State as expressed in the Public Utilities Act.

The desire to issue an overabundance of notes and bonds is an effort to bridge over with securities the accumulation of years of loss and apparent mismanagement. If the value of this property is not greater than \$550,000 no alchemy of finance can produce a value of \$812,000. After reorganization, economical and efficient management may certainly make these properties more valuable than they now are, but they can not produce \$812,000 of property out of \$550,000 at this time.

In behalf of this proposed plan of reorganization it was urged by a witness for applicant that it merely desired to pay its debts. This argument has been presented to the Commission before on behalf of a utility desiring to overissue its securities. In reality, this proposal does not so much mean that the company intends to pay its debts as that it intends that the public shall pay them. The value of the securities thus issued could only be established through an income sufficient to meet the interest thereon and this income must come from the public in the form of rates.

There are other weighty reasons that render the proposed plan of reorganization unfortunate. The properties have been allowed to depreciate; the company has competition in the rich territory of San Bernardino, and it is in evidence that natural gas may be introduced into the field served by applicant. It is also in evidence that Citrus Belt Gas Company must make certain extensions, and once heavily overloaded with obligations it would find itself in dire straits to borrow money necessary for these additions to its property.

The parties now in control of Citrus Belt Gas Company stated at the hearing that it was not the intention so much to engage in the gas business as to operate the properties until such a time as a purchaser could be found. Surely the less encumbrance the greater the opportunity for sale. It has been urged, also, that the income bonds such as the applicant herein desires to issue, would not prove embarrassing, for the reason that interest need be paid only if earned. It is admitted that the income bond was selected chiefly through the expectation that the company could not meet the interest. Such a bond would naturally depreciate greatly in price and would be but little better

than a preferred stock. It would serve as a barrier to future and better financing.

It is beyond question that in the proposed reorganization of these properties, the committee in charge has labored with good intention. It endeavored to accomplish two things: to reorganize the properties upon an efficient operating basis and to satisfy the creditors on a dollar for dollar basis. While the aim is worthy in both respects, they can not be reconciled. If the property is to be efficiently operated in the interest of the public, it must not be weighted down with a heavier load of debt than it can carry. On the other hand, if it aims singly to pay out upon this excessive indebtedness it could do so only at the sacrifice of service and equitable rates. If the trustees who are to operate these properties desire to serve the public properly they must abandon the thought that they can at this time pay out in full upon the accumulated indebtedness.

Even though this Commission should authorize Citrus Belt Gas Company to issue all the securities prayed for, it would still avail it naught. The city of San Bernardino, in the exercise of its authority over the rates of public service corporations, could in the future as it has done in the past, fix the rates to be charged for gas. These rates are fixed upon a fair value of the property and calculations as to earnings must be gauged accordingly. The power of the other cities served by those properties to fix rates must also be taken into account.

I shall now consider the relationship among the various classes of indebtedness represented by the creditors' claims to determine what obligations Citrus Belt Gas Company must legally assume and what it may voluntarily assume. The assignment from Los Angeles Trust and Savings Bank to Mr. P. J. Dubbell as trustee, executed on August 17, 1912, sets forth specifically that the properties are conveyed subject to the following underlying bonds:

|  |              |
|--|--------------|
| Bonds of Home Gas and Lighting Company of San Bernardino issued under mortgage and deed of trust to W. S. Hooper, and dated March 30, 1906-----  | \$40,000 00  |
| Bonds of Home Gas and Electric Company of Redlands issued under a mortgage and deed of trust to Title Insurance and Trust Company of Los Angeles, dated July 1, 1906-----  | 113,700 00   |
| Bonds of Redlands Gas Company issued under a mortgage and deed of trust to Union Trust Company of San Francisco-----   | 50,000 00    |
| Bonds of Redlands Gas Company issued under a mortgage and deed of trust to Union Trust Company, dated May 1, 1903--  | 48,500 00    |
| Bonds of Colton Gas Company issued under a mortgage and deed of trust to Los Angeles Trust and Savings Bank-----   | 15,000 00    |
| Total -----  | \$267,200 00 |
| Approximately \$84,000 face value of the bonds of Home Gas and Electric Company of Redlands, being part of the bonds provided for by that certain trust deed dated July 1, 1906, held as collateral security for an indebtedness of San Bernardino Valley Gas Company----- | 84,000 00    |
| Grand total -----  | \$351,200 00 |

Citrus Belt Gas Company must begin, therefore, by recognizing the underlying bonds in the sum of \$267,200 and the indebtedness represented by collateral bonds of Home Gas and Electric Company of Redlands in the sum of \$84,000.

The underlying bonds in the sum of \$267,200 were assumed at the time of the consolidation of these properties in 1909, and the indebtedness represented by \$84,000 of Home Gas and Electric Company bonds came about also through the transactions incidental to the consolidation. When San Bernardino Valley Gas Company purchased the properties of Home Gas and Electric Company of Redlands it took over the physical properties and not the stock of Home Gas and Electric Company. Home Gas and Electric Company had issued bonds to the amount of \$113,700.

When San Bernardino Valley Gas Company purchased the properties of Home Gas and Electric Company it assumed the outstanding bonds in the sum of \$113,700 and gave its note in the sum of \$151,000 to Home Gas and Electric Company for the equity in the properties. It was provided that when payment of the note of \$151,000 had been completed, the \$84,000 of collateral bonds were to be returned to Home Gas and Electric Company and canceled. San Bernardino Valley Gas Company had paid only \$38,054 upon the note when it went into bankruptcy, leaving a balance of \$112,946 unpaid. Having failed in its obligation to pay \$151,000 to Home Gas and Electric Company of Redlands, the \$84,000 in bonds of Home Gas and Electric Company were not called in and are therefore still outstanding. As San Bernardino Valley Gas Company had taken over the properties of Home Gas and Electric Company and had assumed such bonds as were a mortgage thereupon, and in the sale of the properties, it was provided that any conveyance should be conditioned upon the recognition of this underlying indebtedness of \$84,000, it develops, therefore, that Mr. P. J. Dubbel, holding these properties as trustee, does so, subject not only to the underlying bonds in the amount of \$267,200, but to the \$84,000 of Home Gas and Electric Company collateral bonds in addition. Any transfer of the properties which Mr. Dubbell may make to Citrus Belt Gas and Electric Company will therefore transfer automatically an initial indebtedness of \$351,200.

It has already been established that the value of this property presupposing the investment in additions and betterments of the money received from the sale of the Lytle Creek Power Company securities, will range from \$510,000 to \$550,000. The indebtedness, therefore, will be from 63 per cent to 68 per cent of the value of the properties.



We shall now pass to a consideration of the other claims of these creditors. These claims may be thus summarized:

|   |                     |
|---|---------------------|
| Bonds of the San Bernardino Valley Gas Company----- | \$187,000 00        |
| Notes payable-----                                  | 285,866 00          |
| Accounts payable-----                               | 14,140 54           |
| Unpaid interest on bonds-----                       | 19,087 50           |
| Interest on notes payable-----                      | 39,102 41           |
| <b>Total-----</b>                                   | <b>\$545,196 54</b> |

In the item of "notes payable" is included a note for \$112,946.09. This is the balance due on the note given by San Bernardino Valley Gas Company to Home Gas and Electric Company, and upon the payment of which the aforesaid \$84,000 of Home Gas and Electric Company bonds were to be returned and canceled.

The sale of the gas plant properties to Mr. P. J. Dubbell having been made subject to the lien of these \$84,000 of collateral bonds, and as any transfer of the properties to Citrus Belt Gas Company carries this same recognition, as a matter of course, the amount due on the note will be lessened by \$84,000. The claim, therefore, which appears in applicant's statement as a note payable due Home Gas and Electric Company of Redlands for \$112,946.09 may be re-classified into:

|                    |             |
|--------------------|-------------|
| Bonds-----         | \$84,000 00 |
| Notes payable----- | 28,946 09   |

We may, therefore, deduct from the \$545,196.54 the sum of \$84,000, leaving \$461,196.54, in claims after the recognition of the underlying obligations in the sum of \$351,200.

Among these claims aggregating \$461,196.54 appears unpaid interest on bonds and notes in the total amount of \$58,189.91. This item represents the accumulation of unpaid interest mainly during bankruptcy. The payment of this item of defaulted interest by bonds would mean the capitalization of bankruptcy. This is not sound in principle. It is based on a theory which places a higher valuation on failure than success. I can see no reason why the defaulted interest of the bankrupt's bonds should be heaped upon the shoulders of the newly organized Citrus Belt Gas Company. In fact, I find every reason why it should not. The elimination of this interest item from the various claims aggregating \$461,196.54 leaves a balance of \$403,006.63, which represents the remaining claims which the applicant desires to take care of.

Even if a maximum value for these gas properties in the amount of \$550,000 were conceded, there would remain an equity of only \$198,800 above the underlying obligations of \$351,200. If we assume a value of \$510,000 for these properties, there is left an equity of only \$158,800 over the underlying indebtedness. Taking for the moment the larger sum, the applicant is confronted with this condition: At most, it can show an equity in the properties above its under-

lying indebtedness of \$198,800 with which to satisfy the holders of the claims to the total of \$403,006.63. On this valuation the ratio is about one to two.

In this connection I desire to call attention once more to the earning statement filed by the trustee covering the operations of these gas properties during the calendar year 1912. This statement shows a net income of \$44,620.33. Applicant has cited this figure as representing its net earnings applicable to bond interest. It has neglected to charge off depreciation which, if figured at 4 per cent on \$500,000 of property would amount approximately to \$20,000, and would leave a balance of \$24,620.33 as applicable to bond interest. The interest on the underlying bonds in the sum of \$267,200 amounts annually to \$14,997 and the interest on the underlying obligation of \$84,000 as represented by collateral bonds of Home Gas and Electric Company of Redlands at 6 per cent amounts to \$5,040, making the total bond interest \$20,037. This sum deducted from \$24,620.33 of net income would leave a surplus after the payment of the bond interest of \$4,583.33. This result indicates that it would be neither wise nor entirely practical at this time to add in any substantial degree to the underlying burden already established. The sum of \$4,583.33 represents only a small surplus which will provide merely a portion of the money necessary for the upbuilding year by year of these properties.

The claims included in the total of \$403,006.63 for which no provision has yet been made are grouped into the following classes:

Claims representing the bonds of the bankrupt:

|   |              |
|---|--------------|
| San Bernardino Valley Gas Company-----  | \$187,600 00 |
| Promissory notes of the bankrupt San Bernardino Valley Gas<br>Company secured by its bonds----- | 201,866 09   |
| Accounts payable -----  | 14,140 54    |
| Total -----   | \$403,006 63 |

From the summary of the proposed plan of reorganization and from the modifications thereof, herein, it appears that the applicant desires that nearly all of the claims representing this sum be considered on a parity. It is not for the Commission to say, therefore, that it shall make any distinction under the present circumstances.

The plan of reorganization, as presented originally, recognized the priority of two claims which appear among those comprising the total of \$403,006.63. These are the claims of H. B. Duncan and H. C. Dillon. The principal of each is \$10,000. The plan, as first framed, provided for the payment of these as follows:

"The Duncan judgment in full in cash."

"The prior claim of H. C. Dillon upon such terms as may be approved by the committee."

Subsequently, by special arrangement, it was provided that Duncan and Dillon should accept income bonds and stock of Citrus Belt Gas

Company in satisfaction of their claims. They were thus placed on an equal footing with other claimants.

Obviously the value of the property is such that financial prudence will not permit any further bonding of these properties in large amount to take care of these assembled claims in excess of \$400,000. This equity, represented by these claims, should be distributed either in the form of stock, or pooled, and placed under the control of trustees. As a matter of fact the applicant herein has already made arrangements to pool such stock as the Commission may authorize, and to that end a committee to handle this trust has been created.

This committee is composed of the following men:

E. S. Moulton, Riverside, California,

For the First National Bank of Riverside,

The Riverside Savings Bank and Trust Company, and others.

F. P. Morrison, Redlands, California,

For the First National Bank of Redlands, and others.

E. D. Roberts, San Bernardino, California,

For the San Bernardino National Bank,

Farmers' Exchange National Bank,

First National Bank of Colton, and others.

G. E. Snidecor, Corona, California,

For the First National Bank of Corona.

Citizens' Bank of Corona, and others.

L. C. Newcomer, Colton, California,

For the Colton National Bank, and others.

A. Gregory, Redlands, California,

For the Home Gas and Electric Company, of Redlands.

A. M. Ham and Z. T. Bell, San Bernardino, California,

For the Home Gas and Lighting Company of San Bernardino.

It further appears that it is the expressed intention of Citrus Belt Gas Company that the property should be managed in trust until such time as it could be sold at reasonable advantage. It appears from the testimony of Mr. Moulton, and from the statements of Mr. H. L. Carnahan, attorney for Citrus Belt Gas Company, that the parties in interest would consider favorably an arrangement by which the stock were pooled for a period of ten years, and it appears further that the representatives of Citrus Belt Gas Company have expressed their approval of an arrangement which might provide for the pooling of such income bonds as the Commission may authorize.

The parties holding these claims of \$403,006.63 are entitled to an equity in these gas properties over the underlying indebtedness of \$351,200. That equity could not be increased or decreased by the mere act of issuing securities. The value of this equity for the purposes of sale can best be demonstrated after a period of efficient

and economical management of the gas properties. After such a demonstration of value, if the parties in interest carry out their intention of selling the properties, they will have available a tangible sum for distribution among themselves. I cannot see that any rights which the holders of these claims possess can in any way be jeopardized or lessened by their retention at this time in the form of stock or a pro rata participation in that equity. It is in evidence before the Commission that Mr. Moulton, president of Citrus Belt Gas Company, and Mr. Carnahan, its attorney, expressed the belief that the interests of all claimants could be properly protected and conserved by pooling such stock and bonds to which they might be entitled. To pool such stock and such bonds is merely to pool the complete interest in the equity.

I believe it would be to the advantage of Citrus Belt Gas Company to dispose of the smaller claims among the "accounts payable" in some other way, which would leave the equity in the property to be divided among those whose claims are \$500 or more. I leave this to the discretion of the applicant itself, with the understanding that it shall determine the basis of payment and submit any plan it may formulate for the discharge of these small obligations to the Commission for its approval. For this purpose I believe the sum of \$5,000 entirely adequate.

I am mindful that the modifications of applicant's plan of reorganization, as herein provided, may require for its consummation and for the preservation of the equities, certain payments upon obligations incurred or upon claims outstanding. I find that a sum not exceeding \$20,000 will suffice for this purpose.

I am of the opinion that a proper and satisfactory reorganization of these properties under the ownership of Citrus Belt Gas Company will require, first, that it assume the indebtedness represented by the underlying bonds in the sum of \$267,200; second, that it assume the indebtedness represented by the \$84,000 of Home Gas and Electric Company collateral bonds; third, that it issue promissory notes to make payments upon obligations incurred or upon claims outstanding in a sum not to exceed \$20,000, and to discharge the smaller claims among the "accounts payable" in a sum not to exceed \$5,000, making a total of \$25,000 of such promissory notes; and fourth, that it issue its shares of stock to such other claimants as may be entitled to share in the property.

As previously indicated the earnings of these gas properties were sufficient in 1912, after making proper allowance for all necessary operating expenses, depreciation, and interest on \$267,200 of underlying bonds and on additional obligations of \$84,000, to show a surplus of \$4,583.33.

Additional obligations of \$25,000 would, at 6 per cent, impose a further interest charge of \$1,500, leaving a balance of \$3,083.33. The properties at this time can carry no more than this with a proper degree of safety.

A maximum issue of bonds and notes, as provided herein, would create an indebtedness of \$376,200 or 73 per cent upon a valuation of \$510,000 and 68 per cent upon a valuation of \$550,000 for the gas properties.

I find the value of the equity in these properties, above the underlying bonds in the amount of \$351,200 to be assumed by Citrus Belt Gas Company, to lie between \$158,800 and 198,800. As the amount of the outstanding claims as found herein amounts to \$403,006.63, I believe the conclusion inevitable that there is available for the settlement of these claims not over fifty cents on the dollar. In reaching these figures I am not presuming to fix an exact valuation, but have endeavored merely to indicate a basis upon which an issue of stock may be authorized. The Commission has not authorized an issue of stock at less than 80 per cent of its par value. In view of the fact that no organization expenses or bond discount appear herein, and in consideration also of the fact that net earnings have been made available for additions and betterments, I recommend that Citrus Belt Gas Company be authorized to issue its stock to the par value of \$200,000.

I find after a review of the facts presented in this application, that authority should be granted as to that portion providing for the sale of the properties by Mr. P. J. Dubbell to Citrus Belt Gas Company. As to that portion of the application which petitions for authority to issue stock, bonds, and notes, I find that it should be granted in some particulars and denied as to others, and to that end I submit the following form of order:

#### ORDER.

P. J. Dubbell and Citrus Belt Gas Company having made application to this Commission for an order authorizing the sale by P. J. Dubbell and the purchase by Citrus Belt Gas Company of gas properties now held in the name of P. J. Dubbell and comprising two gas plants in Redlands, one gas plant in San Bernardino, one gas plant in Corona and one gas plant in Colton; and application having been made to this Commission by Citrus Belt Gas Company for authority to issue to P. J. Dubbell in exchange for said properties \$444,400 in stock, \$444,400 in 5 per cent cumulative income bonds dated September 1, 1912, and due September 1, 1942; \$84,000 of 6 per cent promissory notes, due serially from March 1, 1917, to March 1, 1922; a promissory note for \$7,000 due in one year, with 6 per cent interest; a promissory note for \$7,000 due in two years, with 6 per cent interest; \$2,796.54 in promissory notes, due in five years, with interest at 5 per cent; and

\$98,000 of 5 per cent cumulative income bonds, dated September 1, 1912, and due September 1, 1942, for purpose of collateral security;

And a hearing having been held, and it appearing that the public interest will be served by the sale of these properties;

*It is hereby ordered* that P. J. Dubbell be and he is hereby authorized to sell to Citrus Belt Gas Company those gas plants now held in his name, comprising two gas plants in Redlands, one gas plant in San Bernardino, one gas plant in Corona, and one gas plant in Colton; and Citrus Belt Gas Company is hereby authorized to purchase said properties;

And it appearing that in purchasing these properties Citrus Belt Gas Company must acquire them subject to certain mortgage indebtedness;

*It is hereby ordered* that Citrus Belt Gas Company be authorized and it is hereby authorized to purchase said properties subject to such mortgages and to assume said mortgage indebtedness in the sum of \$267,200 represented by outstanding bonds as follows:

|  |              |
|--|--------------|
| Bonds of Home Gas and Lighting Company of San Bernardino, provided for in a trust deed to W. S. Hooper, dated March 30, 1906-----  | \$40,000 00  |
| Bonds of Home Gas and Electric Company of Redlands, said bonds being provided for in a trust deed made by Home Gas and Electric Company of Redlands to the Title Insurance and Trust Company of Los Angeles, dated July 1, 1906----- | 113,700 00   |
| Bonds of Redlands Gas Company, said bonds being provided for in a trust deed to Union Trust Company of San Francisco-----  | 50,000 00    |
| Bonds of Redlands Gas Company, said bonds being provided for in a trust deed to Union Trust Company of San Francisco, dated May 1, 1903-----   | 48,500 00    |
| Bonds of Colton Gas Company, said bonds being provided for in a trust deed to Los Angeles Trust and Savings Bank----   | 15,000 00    |
| Making a total of-----   | \$267,200 00 |

And it appearing that in purchasing these properties, Citrus Belt Gas Company must acquire them subject also to an indebtedness of \$84,000, represented by \$84,000 of collateral bonds of Home Gas and Electric Company of Redlands previously issued for purposes of collateral security and provided for in a trust deed made by Home Gas and Electric Company of Redlands to the Title Insurance and Trust Company of Los Angeles, dated July 1, 1906, said \$84,000 of bonds being in addition to the aforesaid \$113,700 of bonds of Home Gas and Electric Company of Redlands;

*It is hereby ordered* that Citrus Belt Gas Company be authorized, and it is hereby authorized to purchase said properties subject to such indebtedness and to assume said mortgage indebtedness in the amount of \$84,000.

Underlying bonds of all kinds to be assumed by Citrus Belt Gas Company under this order herein shall amount to a total of \$351,200.

And it appearing that the public interest will be best served by authorizing Citrus Belt Gas Company to issue certain securities not properly chargeable to operating expenses or to income, and denying it authority to issue other securities as applied for;

*It is hereby ordered* that Citrus Belt Gas Company be authorized and it is hereby authorized to issue \$25,000 face value of notes in a form to be approved by this Commission. The authority hereby given Citrus Belt Gas Company to issue \$25,000 face value of notes is given subject to the following conditions:

1. Said \$25,000 in notes shall be issued for a period not to exceed five years, at an interest rate not to exceed 7 per cent, and shall net Citrus Belt Gas Company the face value thereof.

2. The proceeds from said notes shall be used for the following purposes only:

(a) To make payments upon obligations incurred or upon claims outstanding, \$20,000.

(b) To pay small claims among "accounts payable" on a basis to be approved by this Commission, \$5,000.

3. Said obligations, claims outstanding and "accounts payable" shall be paid only after a list of such obligations, claims outstanding and "accounts payable" which Citrus Belt Gas Company desires to pay shall have been filed with and approved by this Commission.

4. Said notes shall be issued only after Citrus Belt Gas Company shall have filed with this Commission a stipulation that all moneys received from the sale of the stock, bonds, and notes of Lytle Creek Power Company held by Citrus Belt Gas Company shall be invested by said Citrus Belt Gas Company in additions and betterments to its property.

It appearing further that Citrus Belt Gas Company should be authorized to issue stock for the equity in its properties above the indebtedness;

*It is hereby ordered* that Citrus Belt Gas Company be authorized, and it is hereby authorized to issue not to exceed 2,000 shares of its capital stock of the par value of \$100 per share.

Said stock shall be issued upon the following conditions, and not otherwise:

1. From the following list of claims shall be deducted and removed those which shall have been discharged or eliminated as otherwise herein provided. To the persons, firms or corporations whose names shall thereafter remain upon the list there shall be issued one share

of stock of Citrus Belt Gas Company of the par value of \$100 for every \$200 of such claim as it may appear on said list.

| Name of claimant.                                      | Amount.     |
|--|-------------|
| Home Gas and Electric Company of Redlands-----         | \$28,946 00 |
| Home Gas and Lighting Company of San Bernardino-----   | 75,000 00   |
| First National Bank of Riverside-----                  | 36,000 00   |
| Farmers' Exchange National Bank of San Bernardino----- | 26,500 00   |
| C. M. Grisinger, Colton-----                           | 25,000 00   |
| Colton National Bank-----                              | 18,500 00   |
| Riverside Savings Bank and Trust Company-----          | 15,000 00   |
| Merchants' National Bank, San Francisco-----           | 15,000 00   |
| San Bernardino National Bank-----                      | 15,000 00   |
| Citizens' Bank of Corona-----                          | 11,500 00   |
| All Night and Day Bank of Los Angeles-----             | 11,000 00   |
| H. B. Duncan-----                                      | 10,000 00   |
| First National Bank, Redlands-----                     | 10,000 00   |
| First National Bank, Los Angeles-----                  | 10,000 00   |
| H. C. Dillon Company-----                              | 10,000 00   |
| F. B. Hathaway-----                                    | 8,000 00    |
| C. D. Brennerman-----                                  | 6,000 00    |
| George Brown-----                                      | 5,000 00    |
| W. H. Miller-----                                      | 4,920 00    |
| Peter Provensal-----                                   | 5,000 00    |
| Brennerman Estate-----                                 | 5,000 00    |
| First National Bank, Colton-----                       | 5,000 00    |
| W. A. Manson-----                                      | 3,002 00    |
| C. L. Allison-----                                     | 3,000 00    |
| D. H. Kathen-----                                      | 3,000 00    |
| W. C. Barth-----                                       | 3,000 00    |
| First National Bank, Corona-----                       | 2,500 00    |
| Snidcor & Mueller-----                                 | 2,500 00    |
| L. C. Newcomer-----                                    | 2,500 00    |
| Mary Rose Dukes-----                                   | 2,500 00    |
| Platt Sisters-----                                     | 2,000 00    |
| E. A. McGilivray-----                                  | 2,000 00    |
| C. E. Vahey-----                                       | 2,000 00    |
| H. R. Boynton-----                                     | 1,000 00    |
| A. A. Caldwell-----                                    | 1,500 00    |
| Mary S. Sargent-----                                   | 1,000 00    |
| A. G. Hubbard-----                                     | 500 00      |
| Citizens' National Bank, Redlands-----                 | 500 00      |
| W. H. Swan and R. C. Harbison-----                     | 1,683 70    |
| Colton Hardware Company-----                           | 3,268 42    |
| Chas. F. Stamps, Jr.-----                              | 252 45      |
| Smith-Booth-Usher Company-----                         | 454 89      |
| American Stove Company-----                            | 443 05      |
| W. F. Boardman-----                                    | 314 53      |
| Murphy Oil Company-----                                | 2,475 79    |
| F. R. Kellogg & Co.-----                               | 3,617 46    |
| Home Investment Company-----                           | 371 00      |
| Bungalow Apartment Company-----                        | 72 50       |
| Daniel Lord-----                                       | 16 00       |
| R. G. Willett-----                                     | 27 95       |
| City Paper and Paint Company-----                      | 95          |
| G. Johnson-----  | 75          |
| Smith Bros.-----                                       | 1 05        |
| Towne, Seecombe & Allison-----                         | 75          |
| R. W. McGilivray-----                                  | 50          |
| Roy Edwards-----                                       | 1 50        |
| James Campbell-----                                    | 1 50        |
| Norman Reeves-----                                     | 2 30        |
| Corona Truck and Transfer Company-----                 | 2 50        |
| F. H. Ott-----   | 25          |
| Harry York-----  | 18 00       |



| Name of claimant.                           | Amount.             |
|---|---------------------|
| Colton Machine Shop-----                    | \$1 75              |
| J. M. Moore & Co.-----                      | 9 15                |
| Sun Drug Company-----                       | 75                  |
| Redlands News and Stationery Company-----   | 2 00                |
| Redlands Cement Works-----                  | 85                  |
| Redlands Pharmacy-----                      | 1 60                |
| Cline & Underwood-----                      | 2 52                |
| Kennard & Howland-----                      | 3 00                |
| Sanitary Laundry Company-----               | 75                  |
| J. P. Humphrey-----                         | 2 30                |
| L. Sherrard-----                            | 5 25                |
| Gowland Bros.-----                          | 3 00                |
| City Transfer Company-----                  | 34 03               |
| Heap & Heap-----                            | 45                  |
| E. S. Moulton-----                          | 9 95                |
| James Reed-----                             | 7 00                |
| Redlands Hardware and Stove Company-----    | 21 95               |
| Geo. M. Cooley Company-----                 | 1 25                |
| City Street Department, San Bernardino----- | 1 50                |
| Sparr & Huxshaw-----                        | 25                  |
| Z. T. Bell-----                             | 31 40               |
| Leonard & Surr-----                         | 75 00               |
| E. Mills Suess-----                         | 16 00               |
| Glass Bros.-----                            | 1 15                |
| San Bernardino Daily Sun-----               | 51 75               |
| Review Publishing Company-----              | 20 00               |
| Corona Gas and Electric Company-----        | 8 52                |
| San Bernardino Hardware Company-----        | 1 25                |
| Corona Hardware and Implement Company-----  | 9 64                |
| Osbun Iron Works-----                       | 3 68                |
| Hanford Iron Works-----                     | 35 56               |
| W. F. Secrest-----                          | 8 00                |
| Mueller Manufacturing Company-----          | 320 76              |
| A. M. Ham-----                              | 18 80               |
| Corona City Water Company-----              | 5 80                |
| C. E. LeRoy-----                            | 4 75                |
| General Gas Lighting Company-----           | 18 25               |
| Western Light and Fixture Company-----      | 12 35               |
| Hulbert Planing Mill-----                   | 32 50               |
| E. M. Cope Commercial Company-----          | 211 34              |
| John Flagg-----                             | 71 00               |
| <b>Grand total-----</b>                     | <b>\$403,006 63</b> |

2. Such fractions of \$200 as shall thereafter remain shall be discharged on a basis not exceeding fifty cents on the dollar from moneys received from the sale at not less than \$80 per share of as many shares of stock as may be necessary for such purpose or in such other way as said Citrus Belt Gas Company shall elect and which shall be approved by this Commission.

3. Said stock shall be issued only after Citrus Belt Gas Company shall have filed with this Commission a stipulation that all moneys received from the sale of the stock, bonds, and notes of Lytle Creek Power Company held by Citrus Belt Gas Company shall be invested by said Citrus Belt Gas Company in additions and betterments to its property.

4. Citrus Belt Gas Company shall within ninety days file with this Commission a statement which shall show the number of shares of

stock it proposes to issue to each person, firm or corporation under this order and the basis upon which it proposes to pay the fractions of \$200 as provided in Condition No. 2, in that portion of this order authorizing the issue of stock.

Citrus Belt Gas Company shall not issue any of the notes or stock herein authorized until it shall have obtained a further order from this Commission stating that it has complied with the conditions herein set out.

The authorization herein given shall apply only to such notes and stock as shall have been issued before January 1, 1914.

That part of the application of Citrus Belt Gas Company which asks for an order of this Commission authorizing it to issue a promissory note for one year in the sum of \$7,000 is hereby dismissed, for the reason that applicant does not legally require the sanction of this Commission to issue a promissory note for a period not exceeding one year.

That part of the application of Citrus Belt Gas Company in which it asks for authority of this Commission to issue \$444,400 of stock; \$444,400 of 5 per cent cumulative income bonds, dated September 1, 1912, and due September 1, 1942; a promissory note for \$7,000 for two years, with interest at 6 per cent; promissory notes to the amount of \$2,796.54, due in five years, with interest at 5 per cent; and \$98,000 of 5 per cent cumulative income bonds dated September 1, 1912, and due September 1, 1942, for purposes of collateral security, is hereby denied.

Nothing in this opinion or order shall be prejudicial to the right of the holders of such stock as may be issued by Citrus Belt Gas Company, to pool such stock herein authorized in such a manner that it may be held by a committee of trustees selected by the holders of said stock. In case such stock is pooled, the trustees so selected shall issue to the owners of the stock so pooled, certificates which shall show the amount of stock and the par value thereof held in trust for every owner thereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 28th day of April, 1913.

## DECISION No. 616.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE AND WILL REQUIRE THE EXERCISE BY IT OF RIGHTS AND PRIVILEGES UNDER FRANCHISES GRANTED TO IT BY THE CITY OF STOCKTON, BY ORDINANCE NO. 566, APPROVED DECEMBER 30, 1912, AND BY THE COUNTY OF SAN JOAQUIN, BY ORDINANCE NO. 399, PASSED JANUARY 7, 1913, OTHER THAN THE TERRITORY AS TO WHICH SAID CORPORATION WAS GRANTED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY ORDER OF THE RAILROAD COMMISSION, DATED JULY 3, 1912, AS MODIFIED BY ITS ORDER DATED OCTOBER 8, 1912.

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Application No. 347.

*Decided April 29, 1913.*

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Applicant asked permission, under section 50 of the Public Utilities Act, to extend its electrical distribution system and to furnish electricity in the city of Stockton and certain territory adjacent thereto in San Joaquin County in pursuance of franchise rights and privileges granted it by said city and county December 30, 1912, and January 7, 1913, respectively. The Western States Gas and Electric Company, engaged exclusively in supplying electricity in said territory, opposed the granting of the application. Applicant claimed that its service would be superior to that now furnished in the territory and proposed to put in effect a schedule of rates slightly lower than that of the existing company.

The Commission found that the Western States Gas and Electric Company was serving the territory as completely as could reasonably be expected, but that its service has not been what it should be. Also, that the rates proposed by applicant, which rates are in part slightly lower than those of the existing company, can reasonably be accorded by applicant. Principles laid down in the leading case of *Pacific Gas and Electric Company vs. Great Western Power Company*, Case No. 269, decided June 16, 1912, affirmed and this case distinguished on the following grounds, to wit:

- (1) That the Western States Gas and Electric Company has for some time been engaged in the work of reconstructing two inferior systems which it acquired and in unifying the same so as to improve the service, prevent line losses and establish an adequate and efficient plant and system.
- (2) That applicant had failed, in compliance with representations made to the Commission some eight months previously, to make certain rate reductions and in other respects was delinquent in matters arising out of an earlier application by it. (Application No. 64.)

*Held*, In all applications henceforth on the part of one public utility to enter the territory being served by another public utility of like character, the Commission will look, not only to the existing utility, but also to the manner in which the applicant has fulfilled its duties to the public and complied with its representations to the Commission with reference to territory which it may be serving.

*Held*, The Commission does not look with favor on the practice of merely "shading" existing rates. A utility desiring to enter a field being served by another utility of like character should understand that it can not make out its case by simply figuring out rates slightly lower than those of the existing utility, but that it must present to the Commission evidence clearly showing what rate it can reasonably give to the public and at the same time secure for itself a reasonable return on the value of the property actually used and useful for the public purpose.

*Held*, We wish to be distinctly understood as affirming the ruling in the Pacific Gas and Electric Company case to the effect that the existing utility and the applicant are to be judged as of the time when the application is filed. We wish to be distinctly understood as announcing that we will not, except under the most unusual circumstances, permit an existing utility which has not done its duty to the public, to keep its field to itself by agreeing that it will henceforth improve its service or lower its rates or more completely serve the field or in any other respect comply with its full duty to the public. The only reason why we do not judge the Western States Company as of the day when the Oro Corporation filed its application is that on the facts of this case it would be unfair and unjust to do so. Feeling as we do that the Western States Company has been "caught" at a peculiarly disadvantageous time, nevertheless we would grant the application in this case unless we were convinced that there is reasonable ground for believing that as the result of the completion of the reconstruction work the Western States Company will be able to do its full duty, both as to service and as to rates.

*Held*, A wise public policy demands that utilities which are doing their full duty to the public shall be treated with fairness and justice and liberality, and they shall receive such protection to their investments as they may deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes or other means, give to the public a service as good as the existing utility, at rates materially less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public.

Application granted as to such portions of San Joaquin County as lie south of the right of way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler through Stockton and Burnham to the easterly boundary of San Joaquin County, other than the city of Stockton; also the remaining portion of said county lying north of the right of way of said railway company and not heretofore excepted in the Commission's order and supplemental order in Application No. 64.

With reference to the remaining portion of the territory affected by this application, including the city of Stockton and a portion of San Joaquin County adjacent thereto, the Western States Company given ninety days from the date of the order in this proceeding within which to complete its reconstruction work. If the Western States Company shall within said time have satisfied the Commission that its reconstruction work has been completed, and that its service has become what it should be, and shall have submitted to the Commission such rates as the company may deem just and reasonable, not to exceed, in general, the rates which the Oro Corporation has shown that it can reasonably accord, the Commission will issue a supplemental order denying the application as to this portion of the territory. Otherwise the Commission will, by its supplemental order, grant to the Oro Corporation its application in toto.

*Goodfellow, Eells & Orrick, C. L. Neumiller and Samuel Knight*, for  
Oro Electric Corporation.

*Chickering & Gregory, Frederic W. Stearns and Nutter & Orr*, for  
Western States Gas and Electric Company.

## REPORT OF THE COMMISSION.

ESHLEMAN and THELEN, *Commissioners*.

This is an application by the Oro Electric Corporation for a certificate of public convenience and necessity, under the provisions of section 50 of the Public Utilities Act, authorizing the exercise by said corporation of rights and privileges under two certain franchises heretofore granted to it, namely, a franchise granted by the city of Stockton by Ordinance No. 566, approved December 30, 1912, and a franchise granted to it by the county of San Joaquin by Ordinance No. 339, passed January 7, 1913. At the time the application was filed, the applicant had applied to the board of supervisors of San Joaquin County for a county franchise, but the same had not as yet been secured. At the hearing, however, a certified copy of the ordinance granting this franchise was filed with the Commission, and the application will be regarded as asking for authority to exercise rights and privileges under said franchise.

This Commission has heretofore granted to the applicant authority to construct its lines and to serve a portion of San Joaquin County outside the limits of incorporated cities and towns, as will hereinafter appear in greater detail.

The Western States Gas and Electric Company, which is now serving the territory which the Oro Electric Corporation desires to enter, appeared at the hearing and filed its answer and protest. At the hearing both companies introduced voluminous evidence bearing on their respective contentions. This evidence covered every phase of the subject and has been carefully considered by this Commission and its experts before the Commission's conclusions on this application were reached.

Heretofore, on May 23, 1912, the Oro Electric Corporation (which will hereinafter be referred to as the Oro Corporation) applied to this Commission, in Application No. 64, for a certificate of public convenience and necessity for the construction of transmission and distribution lines for electric service in the counties of Plumas, Butte, Yuba, Sutter, Colusa, Yolo, Solano, Contra Costa, Alameda, Sacramento, San Joaquin, and Calaveras. After the hearing of this case, at which the Pacific Gas and Electric Company, the Northern California Power Company, Consolidated, the Western States Gas and Electric Company, and the Vacaville Water and Light Company appeared as protestants, this Commission on July 3, 1912, made its opinion and order in said Application No. 64, providing in part that, subject to the express conditions precedent specified in the order, the Oro Corporation should have the right to construct its reservoir and power plant, with the necessary conduits and appurtenances, in the county of Plumas and transmission and distribution lines for electric service in the following territory:

1. All of Butte County except the cities and towns of Chico, Biggs, and Gridley, and those portions of the county which were already being served by the Oro Corporation;

2. All of Yolo County, except the city of Marysville;

3. All of Sutter County;

4. All of Colusa County, except the cities and towns of Colusa, Princeton, Maxwell, Williams, and Arbuckle;

5. All of the southerly half of Glenn County, except the town of Willows;

6. All of Yolo County, except the town of Woodland, as to which the application was held in abeyance.

7. All of Solano County, except the cities and towns of Vacaville, Dixon, Fairfield, Suisun, Vallejo, and Benicia, and a district having a radius of two miles outside of the town of Vacaville.

8. All of Contra Costa County lying east of a north and south line running immediately east of the city of Martinez, except the city of Antioch.

9. All of Sacramento County lying southerly of an east and west line running immediately south of the city of Sacramento.

10. All of San Joaquin County lying north of the right of way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler, through Stockton and Burnham, to the easterly boundary of the county, except the city of Stockton, the island country, more particularly described as a strip of territory seven miles wide, bordering on the westerly boundary line of the county and reaching from the northwest corner of the county down two thirds of the distance on the westerly boundary, and a rectangular territory lying between north and south lines running through the westerly boundary of Lodi and the easterly boundary of Lockeford, and east and west lines of which one runs one mile south of Lodi and the other four miles north of said city.

11. That portion of Calaveras County which lies between the westerly boundary line of the county and the town of Camanche.

Thereafter, on July 11, 1912, the Western States Gas and Electric Company (which will hereinafter be referred to as the Western States Company) applied for a rehearing of Application No. 64 "as to the district surrounding the city of Stockton at a constant distance of two miles from the municipal limits thereof." After a hearing of said application, this Commission, on October 8, 1912, made its opinion and order amending that portion of its order on the previous application referring to San Joaquin County so as to give to the Oro Corporation the right to enter into and serve that portion of San Joaquin County which was designated as follows:

12. All of San Joaquin County lying north of the right of way of

the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler, through Stockton and Burnham, to the easterly boundary of the county, except

(a) The city of Stockton;

(b) A strip of territory at a constant distance of one mile from the city limits of the city of Stockton, and bounded on the northwest by the lower Sacramento road, on the north by the center line of Harrison street, extended westerly and easterly, on the east by the center line of Ash street, thence westerly along the center line of Copperopolis road to the center line of C street, thence northerly along said center line of C street to said extension of the center line of Harrison street easterly, and on the south by the right of way of the Atchison, Topeka and Santa Fe Railway Company;

(c) The island country, more particularly described as a strip of territory seven miles wide, bordering on the westerly boundary line of the county and reaching from the northwest corner of the county down two thirds of the distance on the westerly boundary; and

(d) A rectangular territory lying between north and south lines running through the westerly boundary of Lodi and the easterly boundary of Lockeford, and east and west lines of which one runs one mile south of Lodi and the other four miles north of said city.

We shall now refer in somewhat greater detail to the two franchises under which the Oro Corporation asks authority to exercise rights and privileges.

Ordinance No. 566 of the city of Stockton, approved on December 30, 1912, grants to the Oro Corporation, its successors and assigns, the right to construct, lay, maintain and operate under and along the streets, highways and public places of the city of Stockton, both underground and overhead distributing systems. The privilege was granted for a term of forty-nine years after the date of the final passage of the ordinance. The ordinance contains the usual provisions of the Broughton Act with reference to the payment to the city of Stockton of 2 per cent of the gross annual receipts. Work under the franchise is to commence within not more than four months from the granting of the same. The ordinance contains detailed provisions with reference to the "underground district" in Stockton and with reference to the construction and maintenance of the grantee's distributing system.

Ordinance No. 339, granted by the board of supervisors of San Joaquin County on January 7, 1913, gives to the Oro Corporation, its successors and assigns, the right to erect, operate and maintain towers, piers, poles and other superstructures, and to suspend, fix and hang thereon wires, cables and other appliances for transmitting and conducting electricity, and to lay, maintain and operate wires, cables and other appliances in conduits and such other methods as may be con-

venient and proper "through, over, along and under the said roads, highways, public ways, streets, lanes and public grounds and places of and in the said county of San Joaquin for conducting electricity for furnishing light, heat and power, and for all or any other purposes for which electricity can or may be used." The ordinance contains provisions with reference to the manner of construction and maintenance of the grantee's towers, piers, poles and other superstructures, specifies that the franchise shall run for the term of fifty years, contains the usual provisions with reference to the payment of a percentage of the gross annual receipts and provides that the work under the franchise shall be commenced in good faith within not more than four months from the time of granting the same.

To sum up the matter in a nutshell, Oro Corporation is asking permission to enter and serve the city of Stockton and certain territory in the county of San Joaquin, which city and territory are now being served with electric energy exclusively by the Western States Company.

The application in this case is made under the provisions of section 50 of the Public Utilities Act, which reads as follows:

"SEC. 50. (a) No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant or system, or of any extension of such street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction; *provided*, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county or city or town within which it shall have theretofore lawfully commenced operations or for an extension into territory either within or without a city and county or city or town, contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; *and provided, further*, that if any public utility in constructing or extending its line, plant or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility, already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants or systems affected as to it may seem just and reasonable.

(b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or



the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; *provided*, that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; *and provided, further*, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

(c) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise or permit of the proper county, city and county, municipal or other public authority. The commission shall have the power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation to the commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the commission shall thereupon issue such certificate."

This section represents a new state policy in the relationship between public utilities and the public. Heretofore, while the various counties and incorporated cities and towns have had the legal right to fix the rates of certain public utilities, as a matter of fact, only a few of them have, except as to water companies, acted under the authority con-

ferred by the constitution and the statutes of this State. As a practical matter, most of the utilities have been permitted to go their own way, reaping as high profits as they could, but subject on the other hand to the possibility of having another utility of a like character enter the field, subjecting them to more or less severe competition. On the one hand, the utilities were in most cases left unhampered to make profits as large as they could, while on the other they were subject to possible competition. The result of such competition was only too often an ultimate consolidation of the competing companies, after a period of more or less fierce competition, whereafter the consolidated utility claimed the right in the courts to receive from the public rates high enough to yield the company a return on all the property of the original competitors, including the property which had been duplicated and a large portion of which had been "junked." Regulation of these utilities in the interest of the public was largely sporadic and ineffective.

Under the new state policy, these conditions are radically different. In the first place, the Railroad Commission is given the right to establish the rates of all utilities in territory over which the Commission has jurisdiction. The result will be, that while the utilities will be allowed a just compensation of the value of their property used and useful for the public purpose, they can not continue to expect the public to pay to them rates high enough to yield unreasonably high returns on the property. As the right to the former high returns has, in effect, been taken away, it is only fair that the utilities shall receive a degree of protection from possible competition, in case they are doing their full duty, so that what they lose in the way of possible unreasonably high returns they shall, in a measure, gain in greater security to their investment. This principle, however, applies only to such utilities as are doing their full duty to the public. The protection to the investment of a utility which is doing its full duty to the public is demanded, not merely as a matter of fairness, but also as a matter of common sense. If the utilities are to be held down to a return which, while liberal, is not to be unreasonably high, and if, at the same time, the utilities are to continue to be subject to more or less fierce competition, people with money to invest will look to fields other than public utility enterprise for the investment of their funds. As the State of California is a young and growing state, with tremendous possibilities of development, and as it needs public utility enterprises to assist it in its growth, a wise public policy demands that utilities which are doing their full duty to the public shall be treated with fairness and justice and liberality, and they shall receive such protection to their investments as they may deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes or other means, give to the public a service as good as the existing utility, at rates materially

less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public.

\ Under this new state policy, competition between public utilities is not of itself necessarily a good thing. Whether or not it is a good thing depends upon the results which flow from it in each particular case. If just as good results can be secured by regulation and supervision under state authority of an existing utility which is a natural monopoly, so that the rates and service enjoyed by the public are as good as they reasonably could be under normal competition, the consuming public has nothing to gain by competition, while that portion of the public which invested its funds in the securities of an existing utility may have much to lose by a competitive condition which, while not helpful to the consuming public, can be extremely hurtful to the investing public, and particularly discouraging to persons who are proposing to invest their money in the development of new utilities in this State in sections thereof where there are no existing utilities of the same character and where they are imperatively demanded for the development of the State.\

This aspect of the public utility question must not be confused with trust regulation as it is by some persons who do not make the distinction between a natural monopoly, such as a telephone, for example, and an ordinary commercial trust. The proponents of the theory that trusts shall be controlled by competition as well as those advocating control by regulation all agree that better control of a natural monopoly, with which competition under ordinary conditions necessarily means duplication, can be had by adequate and efficient regulation than by unrestricted competition.

While this policy is new in this State, it is the accepted policy in most of the states of the east and middle west, which have adopted the policy of effective state regulation of public utilities. This difference, however, exists, in the method of working out this policy as between California on the one hand and these other states on the other—in the other states the commissions have been very much disinclined to permit new utilities to enter a field already served by another utility of like character, even if that utility has not done its duty to the public. In such a case the other commissions largely give to the existing utility its day of repentance and permit it to meet the improved rates or service of the newcomer, thereby discouraging the development of new enterprises. On the other hand, the California Commission, unless particular circumstances call for a different method of handling the problem, looks to the existing utility as of the day when the newcomer knocks at the door. If the existing utility is at that time found not to be doing its duty to the public, the newcomer is permitted to enter. While this policy may result in the duplication of properties in some

few cases, the general effect thereof will be extremely salutary for the reason, first, that the existing utilities will be put on their good behavior all the time, and not merely when they are expecting competition, and, secondly, that persons proposing to invest their money in public utilities in California may know that if they find territory in which there is no such public utility or territory which is being served but in which the existing utility is not doing its duty to the public, this Commission will permit the new utility to proceed. In this way, persons proposing to further develop the State of California by means of new utilities are encouraged to proceed. In other words, the policy of most of the other states amounts to throwing cold water on the development of new public utilities, while in California such development is encouraged in proper cases.

The leading case which has been decided by this Commission under section 50 of the Public Utilities Act is the case of *Pacific Gas and Electric Company vs. Great Western Power Company*, Case No. 269, decided June 16, 1912. In that case the Great Western Power Company applied for permission to enter the counties of Napa, Sonoma, and Solano, which counties were being served with electric energy by the Pacific Gas and Electric Company and other electric corporations. In its decision in that case, the Commission established the general principles by which it will be guided in all cases arising under the provisions of section 50 of the Public Utilities Act, in so far as those cases fall within the facts appearing in Case No. 269. In that case the Commission held, in effect, that if the existing utility is giving rates as low as can reasonably be expected and is serving all who apply, so that the field is fully covered, this Commission will be slow to permit a new utility of the same character to enter the same field unless it appear that the new utility, by reason of some natural advantage or improvement in process or similar matter, can give to the public service materially better or rates materially lower than those of the existing utility. In that case the Commission held that if the rates are as low as they can reasonably be expected to be and the service is as good, and the field is covered, the public has nothing to gain by the admission of the new company, while the general public of the State has much to lose by the establishment of the principle that even if a public utility is doing its full duty to the public, it shall nevertheless be subject to the competition of any other public utility desiring to enter the same field, either for legitimate or illegitimate purposes. The Commission held that it would expect evidence to be introduced, showing clearly the facts with reference to the different elements of the case, and bearing particularly on the ability both of the existing company and of the applicant profitably to give such rates and service as to fully comply with the duty of a public utility to the public. Furthermore, the

Commission held in that case that it would judge the two utilities as of the day when the new utility filed its application with this Commission, so that a utility desiring to be protected in the way of competition must do its full duty to the public *before* and not *after* the newcomer knocks at the door. These main principles established in the *Pacific Gas and Electric Company* case were established after considerable thought by this Commission, and will be followed in other cases in so far as they are applicable to the facts of those cases. If other facts arise in any particular case, taking that case out of the facts in the *Pacific Gas and Electric Company* case, it may be necessary for the Commission to establish further principles.

While we are discussing this point it is well to call attention to the fact that while our decision in the *Pacific Gas and Electric Company* has had a substantial effect upon the rates and service of the various utilities in the State in territory not under competition, yet up to the present time we know of very few instances where utilities under no fear of competition have gone as far in the revision of their rates and improvement of their service as we feel they should. We believe that our position heretofore assumed and herein affirmed is the correct one, but if after giving it mature trial we find that the utilities do not voluntarily under the stress of potential competition afford the very best rates and the most adequate service which it is possible for them to accord in non-competitive territory, we shall be forced to the conclusion that other methods must be adopted by us to bring about this result. It may be that if the utilities of the State do not in good faith accept the doctrine which we have held applicable in return for being protected from loss of revenue by competition, and accord to all their patrons that treatment to which they are entitled, voluntarily and without compulsion either from this Commission or under competition, we may be constrained to take the view that they may not justly demand protection from us. It will not avail the utilities anything to enter into understandings between themselves whereby the exclusive territory of one will not be interfered with by another, and under the protection of such agreements maintain unreasonable rates and inadequate service with such territory. This Commission is going to secure for the public reasonable rates and good service from utilities, and as soon as it finds that the method which it has adopted up to the present time, wherein it is sought to give the public the service to which it is entitled without injuriously affecting the utility, has not brought about the desired result, we shall resort to other methods. It cannot be expected if the utilities do not keep their faith that this Commission will continue to be solicitous for their welfare when such utilities, by their disregard of the public interest, have rendered what we consider the fairest solution of this question ineffective.

This brings us to a consideration of the facts in the present application.

The Western States Gas and Electric Company is a corporation created under the laws of this State. Its articles of incorporation were filed in the office of the county clerk of the city and county of San Francisco on November 30, 1910, and a certified copy thereof was thereafter filed in the office of the Secretary of State. Among other properties acquired by this company, were the properties belonging to the Stockton Gas and Electric Corporation and the American River Electric Company, which two companies were competitors in the city of Stockton and surrounding territory in the sale of electric energy. Since the acquisition of these properties by the Western States Company or in behalf of said company in December, 1910, no company other than this one has served the city of Stockton and adjacent territory with electric energy.

The Western States Company secures its electric energy partly from its own plants and partly by purchase from other electric corporations. This company's electric energy is secured principally from the hydro-electric plant on the American River, formerly owned by the American River Electric Company, and having a capacity of 3,000 kilowatts, and the steam plant in the city of Stockton having a capacity of 1,500 kilowatts. It also secures under contracts with the Pacific Gas and Electric Company, the Sierra and San Francisco Power Company and the Great Western Power Company a maximum of 8,900 kilowatts at prices ranging from .625 cents per kilowatt hour in one contract with the Pacific Gas and Electric Company to .875 cents per kilowatt hour in the Sierra and San Francisco Power Company contract and 9 cents in another contract with the Pacific Gas and Electric Company. The Sierra and San Francisco Company contract provides for a minimum payment of \$25,000 to \$39,375 per annum during the life of the contract, which is twenty-two years, and the second Pacific Gas and Electric Company contract provides for a minimum payment of \$27,000 per annum.

It was admitted at the hearing that the Western States Company entered into the contract with the Sierra and San Francisco Power Company for the specific purpose of protecting itself from competition within the city of Stockton, and the attorneys for the Western States Company stated that that company paid just as much and no more than it had to pay to prevent its prospective competitor from coming in. It is very clear to us that this contract is inequitable and unfair and that the amount to be paid to the Sierra and San Francisco Power Company thereunder is excessive. We are likewise of the opinion that the contract between the Stockton Gas and Electric Company and the Pacific Gas and Electric Company, which the applicant has inherited, and

which provides for the 9 cent rate is also unfair from the standpoint of the consuming public. Under these circumstances we do not believe it is lawful or just for the burden of these two inequitable contracts to fall upon the consumers of electricity in the city of Stockton, and we shall impose conditions in the order with reference thereto.

The distributing systems both of the old American River Electric Company and the Stockton Gas and Electric Corporation were taken over by the Western States Company were found to be in poor condition, and individually inadequate and it became necessary to reconstruct and unify these two systems before it was possible in view of the rapidly increasing demands of the community to give to the city of Stockton adequate and proper service. The Western States Company on or about June 1, 1912, entered upon this work of reconstruction and unification and has pursued the same subsequently thereto and is still engaged in the work. The Western States Company serves in San Joaquin County the city of Stockton, the city of Lodi and certain territory surrounding each of said cities, and has in the city of Stockton and the territory immediately adjacent thereto, some 5,333 customers for electric energy.

The Oro Corporation was incorporated on March 13, 1911, under the laws of this State. Shortly thereafter the company purchased from the Oro Water, Light and Power Company its electrical plant and distributing system serving Oroville and vicinity, and also a certain dam site and properties appertaining thereto, and water rights in connection with its proposed reservoir in Humbug Valley in Plumas County. The Oro Corporation proposes to impound the waters of Soda Creek, Grizzly Creek, Butte Creek, and Yellow Creek in its reservoir to be constructed in Humbug Valley, and thence to lead the water about 36,000 feet through a conduit to a surge tower at the head of the pressure pipe lines, thence through the pressure pipes to a power house to be constructed on Yellow Creek near its confluence with the North Fork of the Feather River near Belden on the line of the Western Pacific Railway Company. The effective head obtainable will be in the neighborhood of 1,900 feet. It is proposed that the generating plant will have an installed capacity of 38,000 kilowatts and an annual output capacity of about 166,440,000 kilowatt hours. The company further proposes to construct 190 miles of double circuit steel tower transmission lines from said plant through and into the counties of Plumas, Butte, Sutter, Colusa, Glenn, Yuba, Yolo, Solano, Contra Costa, Alameda, Sacramento, San Joaquin, and Calaveras, and to build distributing lines so as to serve territory in each of said counties. Until said reservoir, power house and transmission lines have been constructed, the Oro Corporation will rely for its electric energy partly on a contract with the Northern California Power Company, Consolidated, and partly on a steam plant which it is erecting in the outskirts of the city of Stockton. The contract with the Northern

California Power Company, Consolidated, was entered into on October 5, 1912, and modified on December 20, 1912, and provides for the delivery by the Northern California Power Company, Consolidated, to the Oro Corporation at a point north of Colusa, at a price of 6 cents per kilowatt hour for a maximum of 3,000 kilowatt hours to be distributed in Butte, Sutter, Yolo, and Yuba counties, and 5 cents per kilowatt hour for electric energy not to exceed 15,000 kilowatts to be used in other counties. In order to serve San Joaquin County from this source, it will be necessary to construct a long transmission line, which work could probably be completed sometime in the fall of this year. In the mean time, the Oro Corporation will have to rely for the service of its customers in San Joaquin County on the steam plant now under construction in the city of Stockton, which plant, when completed, will be inadequate to serve the customers which the Oro Corporation has secured in those portions of San Joaquin County which it has heretofore been authorized by this Commission to serve, without any regard to the territory involved in the present application.

The only territory which the Oro Corporation has hitherto actually served has been Oroville and certain territory adjacent thereto in Butte County, which the company has served since its purchase of the property of the Oro Water, Light and Power Company. The electric energy for the supply of this territory in addition to some 6,000,000 kilowatt hours purchased last year from the Pacific Gas and Electric Company is being secured from two small hydroelectric plants, the one known as the Line Saddle plant, and having a capacity of 2,000 kilowatts, and the other known as the Coal Canyon plant, and having a capacity of 1,000 kilowatts.

We shall now consider the questions of extent to which the territory involved is served, the service and the rates, in accordance with the principles established in the *Pacific Gas and Electric Company* case.

Referring first to the extent to which the Western States Company is serving the territory involved in this application, we find that it is serving the city of Stockton to an extent as great probably as is the case in any other city in this State. Of the 4,000 customers which the Oro Corporation, after an exhaustive campaign, secured in the territory involved in this application, only 600 are consumers who do not at present take electric energy from the Western States Company. Of these 600 customers, a large proportion are outside of the limits of the city of Stockton. Expressed in terms of initial connected load, of the total of about 5,500 kilowatts represented by contracts taken by the Oro Corporation, approximately 4,670 kilowatts is business now being served by the Western States Company, whereas only 830 kilowatts represent new business not hitherto served.



With reference to the territory in San Joaquin County outside of the limits of the city of Stockton, and involved in this application, we find that the territory north and east of the city of Stockton, north of the right of way of the Atchison, Topeka and Santa Fe Railway Company is being served practically to the same extent as the city of Stockton itself, but that south of the right of way of the Atchison, Topeka and Santa Fe Railway Company there is considerable room for additional service. We shall recommend that with reference to this latter territory the application be granted.

With reference to the quality of the service given by the Western States Company, a large mass of evidence was introduced by both companies. The Oro Corporation contended that the service has been uniformly below what it should be, while the Western States Company contended that the service has been as good as it ought to be, with the exception of certain isolated cases. Both companies in addition to introducing a large number of witnesses, who testified pro and con on this question, also introduced numerous volt meter records, showing the result of actual tests with reference to the question of the voltage and the variations therein. This Commission's experts also made investigations with reference to these questions, particularly the accuracy and individual characteristics of the volt meters used by the two companies.

The testimony of the witnesses and the records of the volt meters both showed that the service has been poorest in the northwest section of the city where the Western States Company is now engaged in the reconstruction and unification of its system. It is extremely difficult in cases of this kind to ascertain from the testimony of patrons whether or not the service of a public utility has been what it ought to be. It is very easy to find persons to complain against service, however good it may be, and it is somewhat difficult in cases of this kind to secure witnesses who are willing in the face of these complaints to testify that the service has been good. The fact that the Western States Company was able to secure a large number of reliable citizens to testify that the service has been good, is important evidence, in our opinion, to the effect that it is not fair to make a sweeping criticism to the effect that the service of the Western States Company has been poorer than it ought to be. We are, however, convinced, from the testimony and also from certain of the volt meter records, that there has been considerable variation in the voltage, causing an annoying flickering in the lights in different portions of the city of Stockton, particularly in the northwestern section, during the period of reconstruction and unification, and that in this respect and also in the matter of low voltage, caused by an overloaded condition of certain of the distributing lines, the Western States Company has failed in its full duty to the public. That a considerable portion of the complaints in this respect will be removed

when the reconstruction and unification of the distributing system of the Western States Company has been completed seems equally clear. The fact which we desire to emphasize in this connection, however, is that at the date of the hearing it appeared clearly that the Western States Company had not accorded to the public that quality of service to which it is justly entitled. Whether or not there are circumstances in whole or in part lending to excuse the default on the part of this company will be considered later.

The Oro Corporation claimed that its service would be superior to that of the Western States Company, but there is nothing in the record to substantiate this claim, other than its mere assertion by the Oro Corporation. We have no means of knowing whether the Oro Corporation would give better service than that which has been given by the Western States Company, and, consequently, in the matter of service must confine our attention to that which has been given and is now being given by the Western States Company.

We come now to the very important question of rates. While it is true that service and rates are mutually dependent on each other, it will be convenient for the purposes of this application to consider the question of rates apart from the question of service.

The rates at present being charged in the territory affected, by the Western States Company, are as follows:

**REGULAR CONTRACT THREE AND FIVE YEARS—LIGHTING AND POWER RATES—STOCKTON.**

*Lighting—Meter rates:*

- 7 cents per kilowatt hour minimum bill, \$1.00 per month.
- 5 cents per kilowatt hour minimum bill, \$15.00 per month.

*A. C. power—Meter rates:*

- 4 cents per kilowatt hour for first 500 kilowatts or less.
- 3½ cents per kilowatt hour for second 500 kilowatts or less.
- 3 cents per kilowatt hour for third 500 kilowatts or less.
- 2½ cents per kilowatt hour for balance.

For less than 5 horsepower capacity installed, add 1 cent to each of the above rates.

Minimum bill of \$1.00 per month per horsepower capacity of motors installed. No bill less than \$2.00 per month. Minimum bill of \$2.00 per month per horsepower capacity of polyphase motors installed of less than 5 horsepower. No bill less than \$4.00 per month. Motors installed of 50 horsepower and above, 2½ cents per kilowatt hour; minimum \$1.00 per month per horsepower capacity of motor installed.

*D. C. power—Meter rates:*

- 5 cents per kilowatt hour for first 500 kilowatts or less.
- 4 cents per kilowatt hour for second 500 kilowatts or less.
- 3 cents per kilowatt hour for third 500 kilowatts or less.
- 2½ cents per kilowatt hour for balance.

Minimum bill of \$1.00 per month per horsepower capacity of motor installed.

The rates which the Oro Corporation proposes to charge in the territory affected, both for lighting and power, are as follows:

*Residence Lighting.*

|  |                    |
|--|--------------------|
| Less than 100 kilowatt hours consumed per month..... | 6.5¢ kilowatt hour |
| 100 to 140 kilowatt hours consumed per month.....    | 6.3¢ kilowatt hour |
| 140 to 180 kilowatt hours consumed per month.....    | 6.1¢ kilowatt hour |
| 180 to 220 kilowatt hours consumed per month.....    | 5.8¢ kilowatt hour |
| 220 to 260 kilowatt hours consumed per month.....    | 5.5¢ kilowatt hour |
| 260 to 300 kilowatt hours consumed per month.....    | 5.2¢ kilowatt hour |

300 to 500 kilowatt hours consumed per month----- 4.9¢ kilowatt hour  
 Over 500 kilowatt hours consumed per month----- 5.7¢ kilowatt hour  
 Ten per cent discount if paid before the tenth of the month. Minimum, \$1.00 per month.

*Commercial or Business Lighting.*

|   |                        |
|---|------------------------|
| Less than 95 kilowatt hours consumed per month----- | 6.0¢ per kilowatt hour |
| 95 to 125 kilowatt hours consumed per month-----    | 5.8¢ per kilowatt hour |
| 125 to 160 kilowatt hours consumed per month-----   | 5.6¢ per kilowatt hour |
| 160 to 200 kilowatt hours consumed per month-----   | 5.4¢ per kilowatt hour |
| 200 to 245 kilowatt hours consumed per month-----   | 5.2¢ per kilowatt hour |
| 245 to 295 kilowatt hours consumed per month-----   | 5.0¢ per kilowatt hour |
| 295 to 500 kilowatt hours consumed per month-----   | 4.8¢ per kilowatt hour |
| 500 to 700 kilowatt hours consumed per month-----   | 4.6¢ per kilowatt hour |
| 700 to 900 kilowatt hours consumed per month-----   | 4.4¢ per kilowatt hour |
| 900 to 1100 kilowatt hours consumed per month-----  | 4.2¢ per kilowatt hour |
| 1100 to 1300 kilowatt hours consumed per month----- | 4.0¢ per kilowatt hour |
| 1300 to 1700 kilowatt hours consumed per month----- | 3.8¢ per kilowatt hour |
| 1700 to 2100 kilowatt hours consumed per month----- | 3.6¢ per kilowatt hour |
| 2100 to 2500 kilowatt hours consumed per month----- | 3.4¢ per kilowatt hour |
| 2500 to 3000 kilowatt hours consumed per month----- | 3.2¢ per kilowatt hour |
| Over 3000 kilowatt hours consumed per month-----    | 3.0¢ per kilowatt hour |

Ten per cent discount if paid by tenth of month. Minimum, \$1.00 per month.

*Power.*

From one up to and not including five horsepower: "Less than 200 kilowatt hours consumed per month, 4½ cents per kilowatt hour. All over 200 kilowatt hours, 85 per cent of commercial rate." By commercial rate we refer to the rate given on commercial contracts in the city of Stockton, without discount. No discount allowed. Minimum, \$1.00 per installed horsepower per month.  
 For 5 horsepower and over the following rates are effective:

|   | Per month. |
|---|------------|
| 5-7½ horsepower—First 100 kilowatt hours used per installed horsepower--  | 4 ¢        |
| Second 100 kilowatt hours used per installed horsepower-----              | 3 ¢        |
| All used in excess of above-----  | 2½¢        |
| 7½-10 horsepower—First 100 kilowatt hours used per installed horsepower-- | 3½¢        |
| Second 100 kilowatt hours used per installed horsepower-----              | 3 ¢        |
| All used in excess of above-----  | 2½¢        |
| 10-20 horsepower—First 100 kilowatt hours used per installed horsepower-- | 3 ¢        |
| Second 100 kilowatt hours used per installed horsepower-----              | 2½¢        |
| All used in excess of above-----  | 2½¢        |
| 20-30 horsepower—First 100 kilowatt hours used per installed horsepower-- | 2½¢        |
| Second 100 kilowatt hours used per installed horsepower-----              | 2½¢        |
| All used in excess of above-----  | 2 ¢        |
| 30-40 horsepower—First 100 kilowatt hours used per installed horsepower-- | 2½¢        |
| Second 100 kilowatt hours used per installed horsepower-----              | 2½¢        |
| All used in excess of above-----  | 1½¢        |
| 40-50 horsepower—First 100 kilowatt hours used per installed horsepower-- | 2½¢        |
| Second 100 kilowatt hours used per installed horsepower-----              | 2 ¢        |
| All used in excess of above-----  | 1½¢        |

No discounts allowed. Minimum bill, \$1.00 per installed horsepower per month. When installation is on the changing line, such as a 7½-horsepower motor, the lower rate for this size would be effective.

Power load over 50 horsepower takes special rates, depending upon characteristics of the considered load, namely: the load factor and other special conditions, if any.

The rates of the Western States Company and those proposed by the Oro Corporation are diagrammatically represented on a chart attached hereto and marked "Exhibit A."

It appears from these rates and from the chart that the Western States Company has a uniform rate for electric energy for residence lighting, irrespective of the amount of current consumed, which rate is 7 cents per kilowatt hour if the consumer is willing to sign a three-

year contract, otherwise 8 cents. It appears also that the residence lighting rate proposed by the Oro Corporation is a sliding rate, running from a maximum of  $6\frac{1}{2}$  cents per kilowatt hour to a minimum of  $4\frac{3}{4}$  cents per kilowatt hour, the price depending upon the quantity consumed. These rates can be taken advantage of only by persons who sign a five-year contract. No rates have been proposed for persons who are unwilling to sign a contract. In comparing the residence lighting rates of these two companies it is necessary only to consider the maximum rates, for the reason that very few patrons of the Oro Corporation would consume a sufficient amount of electric energy to entitle them to a rate less than the top rate. Persons who pay simply the minimum charge per month would have to pay the same amount to both companies. Other residence lighting consumers would secure their electric energy from the Oro Corporation at a reduction of one half cent per kilowatt hour, with a discount of 10 per cent for prompt payment.

Referring now to the commercial lighting, it appears that the Western States Company's rate is a 5-cent rate, irrespective of the amount of electric energy consumed, except that there is a minimum charge of \$15 per month per meter. The Oro Corporation proposes a commercial lighting rate graduated according to the amount used and ranging from a maximum of 6 cents per kilowatt hour to a minimum of 3 cents per kilowatt hour, and also subject to a discount of 10 per cent for prompt payment. Due to the \$15 minimum of the Western States Company, the average commercial consumer would be materially benefited by the establishment of the Oro Corporation's proposed rate.

With reference to the power rates, while there is no marked difference between those now in effect by the Western States Company and those proposed by the Oro Corporation, such difference as exists is in favor of the existing rates of the Western States Company.

[It appears to us that the rates proposed by the Oro Corporation have been worked out very largely with the purpose of simply "shading" the existing rates of the Western States Company, and not with the sole intention of ascertaining the rate for which the Oro Corporation can afford, bearing in mind a reasonable return, to supply electric energy. We desire to make it clear that the Commission does not look with favor on the practice of merely "shading" existing rates. A utility desiring to enter a field being served by another utility of like character should understand that it can not make out its case by simply figuring out rates slightly lower than those of the existing utility, but that it must present to the Commission evidence clearly showing what rate it can reasonably give to the public and at the same time secure for itself a reasonable return on the value of the property actually used and useful for the public purpose. It should be said that in this case the

engineers of the Oro Electric Corporation presented to the Commission complete evidence with reference to this point.

We desire to draw attention to the fact that the Western States Company has in effect two schedules of rates, the lower of which can be taken advantage of only by persons who are willing to sign contracts for three years, and that the only persons who can take advantage of the rates proposed by the Oro Corporation on the schedules proposed to this Commission are persons who are willing to sign contracts for five years. We desire to draw attention to the fact that no such contract on the part of either of these corporations can stand as against the power of this Commission under the Public Utilities Act to fix rates which shall be just and reasonable. We desire also to deprecate the practice on the part of public utilities in trying to induce consumers to sign long term contracts, with the result that these consumers, generally not understanding their legal rights, will believe that they have no right to ask for any variation in the terms of such contract during the life thereof. When the Oro Corporation presents to this Commission for formal filing the rates which it proposes to give to the territory into which, under the order of this Commission, the company is permitted to enter, the Commission will give serious consideration to the question as to whether it will permit the Oro Corporation to confine those rates to persons who have signed five-year contracts. Consideration will also be given to the question as to whether or not such rates as the Western States Company may file as the result of the decision in this case may be limited to persons who are willing to sign three-year contracts.

We come now to the important question whether or not the Oro Corporation can reasonably afford to give the rates which it proposes for the territory affected in this proceeding. In support of its contention that it could do so, the Oro Corporation presented the report of Mr. H. P. Gillette, which report is a careful and thorough presentation of estimates to show that the Oro Corporation can reasonably give the rates which were submitted to Mr. Gillette by the Oro Corporation when its Yellow Creek development and transmission system into San Joaquin County shall have been completed. We desire to express our appreciation of Mr. Gillette's thorough work. His report, as well as the data submitted by the other engineers on each side of this controversy have been examined with great care by this Commission and its experts. We wish to express the hope that in future proceedings of a similar character the parties will make the same painstaking efforts to give to the Commission the facts as was done in this case.

Mr. Gillette presented an estimate of \$6,507,300 as representing the cost of hydraulic development, generating plant, transmission lines and substations. He concluded that on the basis of this estimate and on the assumption that the entire output capacity of the plant would be

utilized, and on the further assumption that the transmission and distributing losses would not be in excess of the low percentages used by him, the Oro Corporation can reasonably furnish electric energy at the rates presented to this Commission, to the persons who have signed contracts with the Oro Corporation.

As hereinbefore stated, this report has received the most careful attention in the work which has been done on this opinion. Without commenting in detail on the report, we wish simply to say that the theory presented by the Oro Corporation of ascertaining the value of the water rights of an electrical corporation on the basis of producing the electric energy in some manner, as by purchase from some other company or the generation from some other source of power, instead of on the actual purchase price and expense involved is so well known and so indefensible that we shall not here discuss the methods used. We shall content ourselves by pointing out that on this basis the water rights of the Western States Company have no value at all and those of the Oro Corporation are worth more than a million dollars less than nothing. This conclusion shows the difficulty of wandering into realms of theory when seeking to ascertain facts.

It becomes unnecessary to consider Mr. Gillette's report in further detail, for the reason that the Commission has reached the conclusion that as long as the Oro Corporation can secure from the Northern California Power Company, Consolidated, the amount of electric energy specified in its contract with that company, at the prices therein specified, the Oro Corporation can reasonably supply electric energy to the territory affected in this proceeding at the rates which that company has presented to this Commission.

We are brought now to a consideration of the analogous question of whether or not the Western States Company has been in a position so that it reasonably could have supplied electric energy at rates less than those which it has been collecting. In this matter we desire to draw attention to the fact that the rates which have been collected by the Western States Company are among the lowest for similar service in this State. In support of its contention that its rates have been as low as they reasonably could be expected, the Western States Company presented a report of the value of its property, which report the Oro Corporation attacked by the testimony of Mr. Henry L. Gray. We are of the opinion that the valuation report presented by the Western States Company shows a valuation far in excess of the real value of the property. Not merely are the percentages added for overhead expense and similar items considerably in excess of what, in our opinion, they ought to be, but the unit prices used for physical elements of the plant are in many cases greatly in excess of the price for which the material can actually be delivered at the plant and various points on the system.

This is particularly true as to copper and aluminum conductors, poles and miscellaneous transmission and distribution equipment. On the other hand while Mr. Gray's report concerning the property of the Western States Company probably indicates more nearly the actual value of the property, we have been unable to give to this report the credence which we should like to have accorded to it, for the reason that the report was very hurriedly made and without a thorough knowledge of the conditions under which the plant was constructed or which obtain at the present time.

While the Commission has given considerable thought to this question, we have been unable to ascertain whether or not the rates accorded by the Western States Company have been as low as they reasonably might be expected to be, for the reason that the Western States Company is at present engaged in the reconstruction and unification of its plant, with the result that its property accounts showing the property which should be considered in answering these questions are in such a confused condition that we have been unable so far to ascertain the proper basis for the establishment of the rates of that company in the territory affected.

Up to this point in our inquiry we accordingly find the condition to be about as follows: The Western States Company is serving the territory as completely as could reasonably be expected. On the other hand that company's service has not been what it should be. The rates proposed by the Oro Corporation, which rates are in part slightly lower than those of the Western States Company, can reasonably be accorded by the Oro Corporation. We are unable because of the reconstruction through which the Western States Company is now passing to ascertain whether that company could reasonably have given rates lower than those which it has accorded.

Under these facts, it is a difficult matter to determine whether or not the applicant's prayer should be granted. (If the Commission authorizes the Oro Corporation to enter the city of Stockton and the surrounding territory, the result will be a practical duplication of the entire overhead and underground system of the Western States Company at an expense of some \$500,000, which expense will have to be borne in some way or other by the public, unless the Western States Company were driven from the field, in which case the company's loss would have to be borne by the investors in its securities. The tearing up of the streets of Stockton in connection with the installation of a second underground system and the erection of poles and wires in connection with the overhead distributing system would inconvenience the public and further disfigure the streets of the city. Furthermore, if the application were granted it would result in taking from the Western States Company about 3,400 of its present 5,333 customers and would make it necessary

for that company either to operate at a loss or to raise its rates to make up for the deficit due to the loss of more than half of its customers. By reason of the fact, however, that the Western States Company has not given to the people of Stockton the service to which they are entitled and of the strong probability that the company could have accorded in part at least a better rate, the company is not entitled to the consideration which it would otherwise receive. If, on the other hand, the Commission should deny the application of the Oro Corporation, the development of that company would by no means be materially injured. It appears that of a total estimated maximum peak load capacity of 38,000 kilowatts, the Oro Corporation has already contracted for about 10,000 kilowatts outside of the territory affected in this proceeding and that it expects to be able to dispose of all the remaining energy in territory outside of that affected by this proceeding, as appears from the following table of future load of the Oro Corporation which was submitted to this Commission by the corporation:

FUTURE LOAD OF THE ORO ELECTRIC CORPORATION, WITH ITS CHARACTER ARRANGED IN ORDER OF ITS IMPORTANCE.

*In Butte, Yuba and Sutter Counties—*

Present requirements, 3,000 kilowatts.

Future requirements, 5,000 kilowatts.

Character of load: Industrial, lighting, irrigation and reclamation.

*In Colusa and Glenn Counties—*

Character of load: Reclamation, irrigation, lighting and industrial, 2,000 kilowatts.

*In Yolo County—*

Character of load: Reclamation, irrigation, lighting and industrial, 3,000 kilowatts.

*In Sacramento County—*

Natomas Consolidated, and other loads.

Character of load: Industrial, reclamation, irrigation and lighting, 12,000 kilowatts.

*In Solano County—*

Character of load: Reclamation, irrigation, industrial and lighting, 4,000 kilowatts.

*In San Joaquin County—*

Outside Stockton.

Character of load: Irrigation, reclamation, industrial and lighting, 4,000 kilowatts.

*In Calaveras County—*

Character of load: Industrial, 2,000 kilowatts.

*In Contra Costa County—*

Character of load: Industrial, irrigation, reclamation and lighting, 3,000 kilowatts.

It appears further that of the entire estimated maximum peak load of 38,000 kilowatts it would take only 2,000 kilowatts to serve the city of Stockton, and immediate vicinity, or a little over 5 per cent of the entire output.

In order to decide the application, it becomes necessary to consider two elements which it was not necessary to consider, or which did not exist, in the *Pacific Gas and Electric Company* case, namely, the effect which the fact that the Western States Company is in the middle of a period of reconstruction should have on this application, and also the effect which the Oro Corporation's conduct in territory which it exclusively serves should have on this application as showing the weight



which should be given to that company's representations as to what it proposes to do.

Referring to the first of these two points, it appears, as hereinbefore indicated, that the Western States Company has for some time been engaged in the work of reconstructing the two inferior systems to which it is the heir and in unifying the same so as to improve the service, prevent line losses and establish an adequate and efficient plant and system. It becomes a serious question as to whether it is fair in a case of this kind to judge a company while it is in the midst of such a condition. It occurs to us that it would be just as unfair to pass finally on this company in its present condition as it would be to permit a utility to enter a city in which an existing utility had just completed its plant and was just beginning to serve its customers, and found itself under the difficulties as to both rates and service which would follow from such a condition. It seems to us that common fairness demands that the Western States Company be given an opportunity to finish its reconstruction work within a period to be designated in the order herein and that it then be judged as of that time. In reaching this conclusion we do not overlook the fact that more time than was necessary has been consumed by the company in the reconstruction work which it has hitherto performed; but, bearing in mind all the facts of the case, we believe that it would be just to reach the conclusion herein indicated.

In reaching this conclusion, we wish to be distinctly understood as affirming the ruling in the *Pacific Gas and Electric Company* case to the effect that the existing utility and the applicant are to be judged as of the time when the application is filed. We wish to be distinctly understood as announcing that we will not, except under the most unusual circumstances, permit an existing utility which has not done its duty to the public to keep its field to itself by agreeing that it will henceforth improve its service or lower its rates or more completely serve the field or in any other respect comply with its full duty to the public. The only reason why we do not judge the Western States Company as of the day when the Oro Corporation filed its application is that on the facts of this case it would be unfair and unjust to do so.

Feeling as we do that the Western States Company has been "caught" at a peculiarly disadvantageous time, nevertheless we would grant the application in this case unless we were convinced that there is reasonable ground for believing that as the result of the completion of the reconstruction work the Western States Company will be able to do its full duty, both as to service and as to rates. There is no doubt that a large part of the poor service which has existed in Stockton within the last few months has been caused by the reconstruction work which was being done by the Western States Company in an effort to

improve its system. To that extent, undoubtedly, the service will be improved when the work has been completed.

In passing, it is well to note that this very condition is the result of duplication by competing companies in the past under conditions only slightly different from the result which would follow from the granting of this application.

With reference to rates, there is reasonable ground for the belief that the completion of the reconstruction of work will enable the Western States Company to give lower rates both because of the elimination of a considerable percentage of the line losses and because, as the result of the completion of the reconstruction work, the company will be able definitely to make a segregation between that portion of its property which is used and useful for the public purpose and such portion as has really amounted all along to a duplication and which will largely be "junked" when the work has been completed.

Referring to the second point, this Commission wishes it to be distinctly understood that when a utility applies to this Commission for permission to follow some proposed line of conduct it will be judged as to its promises by the way in which its promises in other proceedings before the Commission have been kept. During the hearing on Application No. 64, it appeared that the Oro Corporation was charging in the city of Oroville and vicinity, a rate of 10 cents per kilowatt hour for electricity for lighting purposes with a penalty of 2 cents per kilowatt hour if the bills were not paid on or before the fifteenth day of the month next succeeding that in which the current was used. Upon having its attention drawn to the matter in connection with the considerably lower rates which the Oro Corporation was promising to put into effect in the territory then under consideration, the company made the statement that it would immediately proceed to the reduction of these rates. It developed at the hearing in the present proceeding, which hearing was held some eight months subsequent to the time of this promise, that the Oro Corporation was still collecting the high rates which it had promised this Commission to reduce. It appeared further, that the company had filed with this Commission a schedule of rates to be effective January 1, 1913, showing reduced rates, but that the company had not complied with this filing. The explanation of the Oro Corporation to the effect that the board of trustees of the city of Oroville had agreed that the company might continue to charge the higher rates until May 10, 1912, furnishes no excuse for the continued collection of these rates in the territory outside of the city of Oroville over which this Commission has authority to establish rates or for the violation of the statement contained in the rates filed with this Commission to the effect that the reduced rates would become

effective both within and without the city of Oroville on January 1, 1913.

It also appeared in this proceeding that the Oro Corporation has been paying far more attention to signing up contracts in territory served by other utilities outside of the territory which it has heretofore been permitted to enter than in proceeding to the development of the extensive territories into which this Commission, by its order in Application No. 64, authorized the company to enter for the development thereof.

We desire at this point to state that in all applications henceforth on the part of one public utility to enter the territory being served by another public utility of like character, this Commission will look not only to the existing utility, but also to the manner in which the applicant has fulfilled its duties to the public and complied with its representations to this Commission with reference to territory which it may be serving.

As hereinbefore stated, the application will be granted as to such portion of San Joaquin County as lies south of the right of way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler, through Stockton and Burnham, to the easterly boundary of San Joaquin County other than the city of Stockton. The application, in so far as it affects the county franchise, is also granted with reference to the remaining portion of San Joaquin County lying north of said right of way of the Atchison, Topeka and Santa Fe Railway Company and not heretofore excepted in this Commission's order and supplemental order in Application No. 64.

With reference to the remaining portion of the territory affected by this application, including the city of Stockton and a portion of San Joaquin County adjacent thereto, the Western States Company will be given ninety days from the date of the order in this proceeding within which to complete its reconstruction work. If the Western States Company shall within said time have satisfied the Commission that its reconstruction work has been completed and that its service has become what it should be and shall have submitted to the Commission such rates as the company may deem just and reasonable, not to exceed, in general, the rates which the Oro Corporation has shown that it can reasonably accord, the Commission will issue a supplemental order denying the application as to this portion of the territory. Otherwise the Commission will, by its supplemental order, grant to the Oro Corporation its application in toto.

We submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by the Oro Electric Corporation, under the provi-

sions of section 50 of the Public Utilities Act, for a certificate that public convenience and necessity require or will require the exercise by said company of the rights and privileges granted to it by Ordinance No. 566 of the city of Stockton, approved December 30, 1912, and the performance of construction work thereunder, and also for authority to exercise the rights and privileges granted to it by Ordinance No. 339, passed by the board of supervisors of the county of San Joaquin on January 7, 1913, and the performance of construction work thereunder to the extent to which this Commission has not heretofore authorized the Oro Corporation to perform construction work within said county of San Joaquin outside of the limits of incorporated cities and towns, and a public hearing having been held on said application, and the Western States Gas and Electric Company, having appeared and filed its answer and protest to said application, and the Commission being fully advised in the premises,

We hereby find as a fact that public convenience and necessity require or will require the exercise of rights and privileges under said franchises and the performance of construction work thereunder, to the extent hereinafter permitted and that they do not require the exercise of such rights or privileges or the performance of construction work, to the extent to which said application is hereinafter denied. Basing our conclusion on this finding of fact and on the further findings contained in the opinion which precedes this order,

*It is hereby ordered as follows:*

1. It is hereby declared that the present or future public convenience and necessity require or will require the exercise by Oro Electric Corporation of the rights and privileges heretofore granted to said corporation by Ordinance No. 339 of the board of supervisors of San Joaquin County, passed January 7, 1913, and the performance of construction work thereunder, in so far as the territory described in said ordinance is located in San Joaquin County, south of the right of way of the Atchison, Topeka and Santa Fe Railway Company, extending from a point east of Bixler through Stockton and Burnham to the easterly boundary of said San Joaquin County, except the city of Stockton, and that the present or future public convenience and necessity require or will require the exercise of rights and privileges under said franchise in such portions of the county of San Joaquin lying north of said right of way, other than incorporated cities and towns and other than such portions of San Joaquin County as to which permission on the part of the Oro Electric Corporation to enter the same was refused in this Commission's order and supplemental order in Application No. 64.

2. With reference to the city of Stockton and the territory adjacent thereto north of said right of way of the Atchison, Topeka and Santa Fe

Railway Company, as to which permission to the Oro Corporation to enter the same was refused in this Commission's order and supplemental order in Application No. 64,

*It is hereby ordered* that the Western States Gas and Electric Company be given ninety (90) days from the date of this order within which to complete its work of reconstruction and unification in and around the city of Stockton. If at the end of this period the Western States Gas and Electric Company shall have satisfied this Commission that its said work of reconstruction and unification has been completed, and that its service has become satisfactory, and if said company shall within said time present to this Commission such rates as it may consider just and reasonable, not to exceed in general the rates presented by the Oro Electric Corporation, this Commission will make its supplemental order denying the application with reference to said territory. If the Western States Gas and Electric Company fails to meet these requirements to the satisfaction of this Commission, the Commission will thereupon, without further proceedings, issue its order granting this application as to the remaining territory.

Within thirty (30) days from the date of this order the Western States Company shall file in this proceeding a stipulation with the Commission and the board of trustees of the city of Stockton to the effect that it entered into the contract with the Sierra and San Francisco Power Company for the purpose of protecting itself from competition, and that the amount which it is obligated to pay to the Sierra and San Francisco Power Company under this contract is excessive and likewise that the amount which it is obligated to pay to the Pacific Gas and Electric Company under the 9-cent rate contract referred to in the opinion herein is excessive, and that it will not in any rate fixing inquiry, either before the authorities of the city of Stockton or before this Commission, directly or indirectly use the expenditures required under these two contracts as an element to be considered in making rates, beyond the amount which the amount of electricity secured under these contracts is reasonably worth.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of April, 1913.

## DECISION No. 617.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE AND WILL REQUIRE THE EXERCISE BY IT OF RIGHTS AND PRIVILEGES UNDER FRANCHISES GRANTED TO IT BY THE CITY OF STOCKTON, BY ORDINANCE No. 566, APPROVED DECEMBER 30, 1912, AND BY THE COUNTY OF SAN JOAQUIN, BY ORDINANCE No. 339, PASSED JANUARY 7, 1913, OTHER THAN THE TERRITORY AS TO WHICH SAID CORPORATION WAS GRANTED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY ORDER OF THE RAILROAD COMMISSION DATED JULY 3, 1912, AS MODIFIED BY ITS ORDER DATED OCTOBER 8, 1912.

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Application No. 347.

*Decided April 30, 1913.*

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Permission given applicant to do work within the city of Stockton under its franchise to the extent to which such work is necessary to preserve its rights under said franchise, said permit not to be construed as securing to applicant any right to exercise any privileges under said franchise if the Commission shall finally deny this application at the expiration of the ninety days set out in the main opinion and order.

*Goodfellow, Eells & Orrick, C. L. Neumiller, and Samuel Knight, for Oro Electric Corporation.*

*Chickering & Gregory, Frederic W. Stearns, and Nutter & Orr, for Western States Gas and Electric Company.*

REPORT OF THE COMMISSION.

ESHLEMAN and THELEN, *Commissioners.*

SUPPLEMENTAL OPINION.

In the Commission's opinion and order on April 29, 1913, a final ruling on the application was held in abeyance for ninety days from the date thereof with reference to the city of Stockton and certain territory adjacent thereto, north of the right of way of the Atchison, Topeka and Santa Fe Railway Company. It is in evidence that the franchise of the Oro Electric Corporation granted by the city of Stockton will expire by operation of law on May 1, 1913, unless work is done thereunder prior to said date. If said company is not permitted to do such work it will, in effect, be denied the right given to it by law to apply to this Commission for a rehearing and the further right to take advantage of the favorable order of this Commission, should it be made, following

the failure of the Western States Company to comply with the provisions of the order within the limit fixed. Under these circumstances, we believe that the Oro Corporation should be permitted to do such an amount of work within the city of Stockton as may be necessary to protect its franchise rights, with the distinct understanding that such work is done for this and no other purpose.

With respect to that portion of San Joaquin County which lies south of the right of way of the Atchison, Topeka and Santa Fe Railway Company, this Commission's said opinion and order are to be taken to cover only the prayer of the application which affected merely a strip within a constant distance of two miles from the boundaries of the city of Stockton south of said right of way.

We submit herewith the following form of supplemental order:

**SUPPLEMENTAL ORDER.**

It is hereby ordered that the Oro Electric Corporation be granted permission to do work within the city of Stockton under its franchise heretofore granted, to the extent to which such work is necessary, to preserve its rights under said franchise, this order, however, to be on the following condition:

It is specifically decided and ordered that such work shall be done to the extent and for the purpose set out herein and not otherwise, and that the Oro Electric Corporation shall not claim that by virtue of such work it has secured any right to exercise any privileges under said franchise if the Commission shall finally deny its application at the expiration of the ninety days set out in the main opinion and order. If at any time this Commission shall be of the opinion that said Oro Electric Corporation is using this order for the purpose of doing work within said city of Stockton in excess of the minimum necessary to comply with the terms of said franchise, this permission will be immediately revoked.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of April, 1913.

## DECISION No. 618.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE  
PROPERTY OF THE STOCKTON TERMINAL AND EAST-  
ERN RAILROAD COMPANY WITHIN THE STATE OF  
CALIFORNIA.

Case No. 206.

*Decided April 30, 1913.*

Proceeding on motion of Commission, under section 47 of the Public Utilities Act, to ascertain the facts entering into the value of respondent's property for use, to the extent same may be material, in any future proceeding in which such facts may become relevant. Findings as to the value of respondent's property not made and the fact that a finding is made on a particular matter is not to be taken as expressing the view of the Commission that that particular matter should enter into a consideration of the value of the property for any particular purpose. Findings of fact with reference to different elements which, properly or improperly, have from time to time been considered by the courts in cases in which the value of the property of a railroad company has been material:

- (1) Organization, construction, and operation;
- (2) Stocks and bonds;
- (3) Revenues and expenses;
- (4) Original cost—term defined. The Commission finds that the original cost of the physical elements, including percentages for engineering, law expenses, interest during construction and commissions, of the operative property of respondent company as of June 30, 1912, is the sum of \$213,746.84.
- (5) Reproduction value—term defined. Method of ascertaining real estate values—additions to estimate of reproduction value as presented by engineering department. The Commission finds that the "reproduction value" cost of the operative physical property of the respondent company as of June 30, 1912, on the assumption that the work is done in one job, is not to exceed the sum of \$215,918.24.
- (6) Present value—term defined. In the use of the term, it is not intended to establish the ultimate fact of present value, as that term is ordinarily used, but rather the "depreciated reproduction value" of the physical elements of the operative property as of June 30, 1912. Items added to engineering department's estimate—the Commission finds that the "present value," as defined, of the operative physical property of respondent company as of June 30, 1912, is not to exceed the sum of \$202,118.27.

W. H. H. Hart, for Stockton Terminal and Eastern Railroad Company.

## REPORT OF THE COMMISSION.

THELEN, Commissioner.

This is the first of the so-called railroad valuation cases brought upon the Commission's own initiative for the purpose of ascertaining the facts entering into the value of the property of the various steam railroad corporations in the State of California.

These proceedings were originally instituted under the provisions of section 20 of the Stetson Act, effective February 10, 1911, and were continued under the provisions of the Public Utilities Act, effective March 23, 1912. The sections of the Public Utilities Act particularly applicable to these proceedings are sections 47 and 70, reading as follows:



SEC. 47. "The commission shall have power to ascertain the value of the property of every public utility in this state and every fact which in its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain all construction, extensions and additions to the property of every public utility."

"SEC. 70. For the purpose of ascertaining the matters and things specified in section forty-seven of this act, concerning the value of the property of public utilities, the commission may cause a hearing or hearings to be held at such time or times and place or places as the commission may designate. Before any hearing is had, the commission shall give the public utility affected thereby at least thirty days' written notice, specifying the time and place of such hearing, and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section and in said section forty-seven of this act, but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to, or from inquiring into such matters in any other investigation or hearing. All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which in its judgment have bearing on the value of the property of the public utility affected. Such findings shall be subject to review by the supreme court of this state in the same manner and within the same time as other orders and decisions of the commission. The findings of the commission so made and filed, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding or hearing before the commission or any court, in which the commission, the state or any officer, department or institution thereof, or any county, city and county, municipality or other body politic and the public utility affected may be interested, whether arising under the provisions of this act or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. The commission may from time to time cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify or affect any finding of fact previously made, and

may at such time make findings of fact supplementary to those theretofore made. Such hearing shall be had upon the same notice and be conducted in the same manner, and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing and findings; provided, that such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except in so far as such supplemental findings shall change or modify the findings made at the original hearing or investigation."

Acting under these statutes, this Commission, on the 24th day of October, 1911, instituted on its own motion an investigation into the facts entering into the value of the property of the Stockton Terminal and Eastern Railroad Company. The Commission called upon said company to furnish maps and profiles of its line of railroad and an inventory of its property, together with the original cost thereof, and also requested the company, if it desired to do so, to submit an estimate of the reproduction value and the present value thereof, as those terms are hereinafter defined. Upon receipt of this information this Commission's engineering department made an exhaustive investigation into the entire subject matter, as will hereinafter appear in greater detail. The engineering department thereupon presented to this Commission its report with reference to certain elements entering into the value of the property of this company, being the original cost, the reproduction value and the present value of the physical property of the railroad, as of June 30, 1912. A time for taking testimony in this case was thereupon set and a notice of the hearing was served on the railroad company, accompanied by a complete copy of the report of this Commission's engineering department.

The hearing was held on the day set and on several days thereafter. The railroad company in general agreed with the estimates of this Commission's engineering department, but claimed that certain additions and corrections should be made, as will hereinafter appear.

In making findings in this case, I shall not make a general finding as to the value of the property of this railroad. Value is an elusive term, and what may properly be a value for one purpose may be entirely improper as a value for another purpose. I shall rather find specific facts bearing on the question of value, as shown by the evidence in this case, leaving it to the future to use these facts or such thereof as may be material in any proceeding in which these facts may become relevant. The fact that a finding is made on a particular matter is not to be taken as expressing the view of this Commission that that particular matter should enter into a consideration of the value of the property of this railroad company for any particular purpose. For instance, I shall find in this case that it cost a certain amount of money to sell the railroad company's stocks and bonds. In making this find-

ing I shall not pass on the question as to whether this amount was a reasonable amount of money to expend for that purpose or whether this fact should be considered at all, in subsequent controversies affecting this railroad as to rates, the issues of securities, or in other matters. I shall content myself with finding the facts with reference to different elements which, properly or improperly, have from time to time been considered by the courts in cases in which the value of the property of a railroad company has been material.

In making the findings of fact in this case I shall consider the following matters:

1. Organization, construction and operation.
2. Stocks and bonds.
3. Revenues and expenses.
4. Original cost, as defined.
5. Reproduction value, as defined.
6. Present value, as defined.

*1. Organization, Construction and Operation.*

The Stockton Terminal and Eastern Railroad Company was incorporated on the 28th day of October, 1908, for the purpose of constructing and operating a standard gauge railroad for the carriage of passengers and freight from the city of Stockton in a general easterly and northeasterly direction, to a point in Calaveras County, near the town of Jenny Lind, for an estimated distance of some 30 miles. The plan was to construct this line of railway from a point on the water front in the city of Stockton to certain rock quarries located near the town of Jenny Lind. The railroad, as hitherto constructed, has not reached the water front of Stockton on the one hand nor the quarries at Jenny Lind on the other, but consists of a line of the length of 15.23 miles between a point in the city of Stockton near the northerly boundary line thereof and the station of "Fine," which station is distant some 15 miles southwesterly from Jenny Lind.

Construction began out of Stockton in the year 1909, and the track was completed to the station Fine in August, 1910, a distance of 15.23 miles.

As shown by the company's annual report to this Commission for the year ending June 30, 1911, the road was formally taken over for operation on April 1, 1911. While the company claims that the railroad is still under construction, it is obvious, as a matter of common sense, that the railroad since April 1, 1911, has actually been under operation.

The railroad throughout its length traverses a rich farming country of flat, level lands, which have been largely subdivided into small acreage tracts. The main products consist of fruit, grapes, grain and vegetables.

## 2. *Stocks and Bonds.*

The company's authorized capital stock consists of 6,000 shares of the par value of \$100 each, being a total authorized issue of \$600,000. Of the stock so authorized, 2,639 shares, having a par value of \$263,900, have been actually issued. Of these shares so issued, 9 are held by the directors. The remaining 2,630 shares are owned by the United Investment Company, which company seems to be a holding company for the railroad company. The United Investment Company sold its own stock to the public and from the proceeds thereof paid to the railroad company \$183,000 for common stock of the par value of \$183,000. The remaining 800 shares of the railroad company's capital stock, owned by the United Investment Company, were issued to the investment company at a book value of 75 per cent on the dollar, in return for a contract by which the investment company agreed, in order to increase the salability of the bonds of the railroad company, that it would, upon demand, take over at par any or all of such bonds of the railroad company as might be issued and sold from time to time, and would issue to the holder thereof in exchange for such bonds its own capital stock at prices ranging from 125 per cent of par upward. While this agreement was supposed to render applicant's bonds more salable, the contract, as a matter of fact, is of little or no value to the railroad company, for the reason that few, if any, of the railroad company's bondholders would care to exchange their bonds for stock in the investment company. From the issue of said capital stock of the par value of \$263,900 the railroad company accordingly has received in cash the sum of \$183,000.

The railroad company has authorized a bond issue of the face value of \$500,000, secured by a first mortgage on its entire property. On June 30, 1912, being the date as of which the facts in this case are to be ascertained, the railroad company had issued its bonds of the face value of \$53,700, from which bonds it had secured the sum of \$48,060 in cash, as appears from the railroad company's report to this Commission for the year ending June 30, 1912.

The railroad company in this case requested a finding with reference either to promotion expense or the cost which has been incurred in selling the railroad company's stock and bonds. There is no evidence in this case with reference to such promotion expenses, if any, as may represent the time and money spent by the individuals who promoted this enterprise, other than such expenditures as appear in the original cost, as reported by the railroad and as found by this Commission's engineering department. There is evidence, however, as to the expenditures made by the railroad company, either in stock or in cash in connection with the sale of its stocks and bonds. As heretofore stated, the railroad issued to the United Investment Company 800 shares of its capital stock, having the par value of \$80,000, for the purposes herein-

before specified. The railroad company claims that in this proceeding it should be allowed such proportion of the sum of \$60,000, at which figure this stock was issued under contract, as the length of the present operated line bears to the length of the entire line as contemplated. As the present operated line is 15.23 miles and the line, as contemplated, is 30 miles, it is apparent that the amount now claimed by the railroad company for this purpose would be about one half of the stock so issued. Without finding whether this amount, either in stocks or in money, is or is not a reasonable amount to be paid for financing the railroad company, I find that 800 shares of stock were issued for the purpose hereinbefore specified and that about one half thereof may be considered as chargeable to that portion of the railroad company's proposed line of railroad which on June 30, 1912, was actually under operation. The railroad company claims that it should be allowed the items of \$4,316.33 for bond agents' commissions and the item of \$7,836.09 for sundry expenses incident to the sale of the bonds. It appears from the books of the railroad company that these items were spent for the purposes indicated and they may be considered for what they may be worth.

### 3. *Revenues and Expenses.*

The revenues and expenses of the railroad company for the year ending June 30, 1912, appear in the annual report of that company on file with this Commission, as follows:

| <i>Operating revenues.</i>             |             |
|--|-------------|
| Freight revenue.....                   | \$8,990 19  |
| Passenger revenue.....                 | 5,949 08    |
| Excess baggage revenue.....            | 25          |
| Express revenue.....                   | 252 58      |
| Switching revenue.....                 | 54 00       |
| Car service.....                       | 201 00      |
| Total operating revenues.....          | \$15,447 10 |
| <i>Operating expenses.</i>             |             |
| Maintenance of way and structures..... | \$2,395 13  |
| Maintenance of equipment.....          | 2,522 07    |
| Traffic expenses.....                  | 391 21      |
| Transportation expenses.....           | 11,892 90   |
| General expenses.....                  | 3,751 62    |
| Total operating expenses.....          | 20,952 93   |
| Operating loss.....                    | \$5,505 83  |

During this same year the accrued interest, which is not included in the foregoing statement of revenues and expenses, amounted to \$2,953.50, and the amount of interest paid during the year was \$2,364. It should also be noted that in the foregoing statement of revenues and expenses no allowance is made for depreciation and taxes.

### 4. *Original Cost.*

The term "original cost," as used in this opinion, means the actual expenditures, in cash or its equivalent, by the railroad company for

the physical elements entering into its operative property as of June 30, 1912, to which are added overhead expenditures for engineering, law, interest and commissions and similar items.

Attached hereto, and marked "Exhibit A," is the railroad company's Exhibit No. 4, introduced at the hearing, and showing the railroad company's statement as to original cost and its estimate as to reproduction value and present value, which exhibit is hereby made a part of this opinion.

Attached thereto, and marked "Exhibit B," is the final summary sheet of this Commission's engineering department, showing the same matters. These exhibits show variations which will hereinafter be referred to in greater detail.

In ascertaining the original cost of the property, this Commission's engineering department made a careful investigation into the original books of account of the railroad company and followed up the same by an examination of the original vouchers in so far as they were ascertainable. Where discrepancies occurred, the matter was taken up with the railroad company's officials, in an effort to ascertain exactly the amount of money which had been spent for the purposes herein indicated. The data furnished by the railroad company with reference to the physical elements entering into the property was checked over by the engineering department with reference to the accuracy of the computations, and then an inspection of the entire property was made on the ground.

The statement of original cost presented by this Commission's engineering department represents in part the result of these investigators and shows, as accurately as it was able to ascertain them, the amounts of money actually spent in acquiring, building and equipping the operative property. Neither the engineering department nor the Commission is passing on the reasonableness of these amounts. I am simply finding the facts in connection with the money which was spent on the property, including the amounts spent for such items as engineering, law expenses and interest during construction.

At the hearing it appeared that certain discrepancies existed between the original cost as reported by the railroad company and the original cost as reported by this Commission's engineering department. The largest discrepancy and the only one of particular moment exists in the item of \$51,673.06, which the railroad company reported under Class 55 for "other expenditures." This item covers the expenditures, either in stock or in cash, in connection with the sale of the railroad company's securities, hereinbefore referred to. As we are now dealing with the original cost of the physical elements of the property, including the necessary percentages for engineering, law expenses and interest during construction, it will not be proper

to consider these items under the head of original cost, as those words are herein defined.

As the result of the testimony introduced at the hearing, I find that certain additions to and subtractions from the statement of original cost as reported by this Commission's engineering department should be made. These items are as follows:

| <i>Additions.</i>                        |            |
|--|------------|
| Right of way and station grounds.....    | \$36 23    |
| Grading .....                            | 537 75     |
| Ballast .....                            | 8 90       |
| Fencing right of way.....                | 33 74      |
| Crossings and signs.....                 | 19 40      |
| Transportation of men and materials..... | 01         |
| Interest and commission.....             | 3,084 90   |
| Other expenditures.....                  | 829 92     |
| Total additions.....                     | \$4,550 85 |
| <i>Subtractions.</i>                     |            |
| Culverts .....                           | \$4 00     |
| Station buildings and fixtures.....      | 25         |
| Engineering .....                        | 2,072 36   |
| Steam locomotives .....                  | 11 50      |
| Passenger train cars.....                | 1,515 00   |
| Law expenses .....                       | 260 03     |
| Total subtractions.....                  | 3,863 14   |
| Total amount to be added.....            | \$687 71   |

The amounts for right of way and station grounds, grading, ballast, fencing right of way, crossings and signs and "other expenditures" are items for which the expenditures were made between April 30, 1912, and June 30, 1912. As the investigations of this Commission's engineering department were concluded as of April 30, 1912, the department, of course, had no knowledge concerning these items, and they should be added subject to the comment that the sum of \$537.75 for grading doubtlessly includes items which should properly be chargeable to maintenance and not to original cost. It has been impossible, however, for this Commission to ascertain what proportion of this amount of \$537.75 is properly chargeable to maintenance, and for that reason, in order to be absolutely fair, the entire item is added. The item of one cent for transportation of men and materials is added for the reason that the original cost as reported by the railroad company shows a total of one cent in addition to the allowance heretofore made by this Commission's engineering department. The addition of \$3,084.90 under Class No. 54, interest and commissions, is made for the following reasons:

The railroad company originally reported a total of \$6,267.09 as the amount of money which was actually spent for these items, being principally interest during construction. The report of this Commission's engineering department reduced the item to \$3,182.19, not on the ground that the money had not been expended, but on the ground that a reasonable amount to expend would not have been in excess of

\$3,182.19. As I am finding now the amount of money actually spent, irrespective of the question of whether it was reasonably spent or not, the total of \$6,267.09 as reported by the railroad company should be allowed under the head of original cost. The item of \$829.92 for "other expenditures" covers expenditures alleged to have been made for capital account between April 30, 1912, and June 30, 1912, and not appearing in any of the other accounts.

The item of \$4.00 for culverts is to be subtracted for the reason that the engineering department's estimate as to original cost is \$4.00 in excess of the moneys actually expended for this item as now appears from the report of the railroad company. The items subtracted on account of engineering, steam locomotives and law expenses are subtracted for the reason that the railroad company's statement of original cost, showing the final expenditures on the company's books as of June 30, 1912, and appearing on the railroad company's Exhibit No. 4, were less in these respective amounts than the amounts ascertained by this Commission's engineering department as of April 30, 1912. The amounts subtracted for station buildings and fixtures and for passenger train cars represent book adjustments as reported to this Commission by the railroad company subsequent to the filing of the railroad company's said Exhibit No. 4.

In order to avoid confusion, attention should be drawn to the fact that the amounts ascertained by this Commission's engineering department for engineering, law expenses, interest and commissions are not percentages, but represent the moneys actually spent for these purposes, as shown on the railroad company's books of account. These items, however, when they appear under the head of reproduction value or present value, represent fixed percentages of the totals to which these respective accounts are applicable.

I find from the evidence in this case that the original cost of the physical elements, including percentages for engineering, law expenses, interest during construction and commissions, of the operative property of the Stockton Terminal and Eastern Railroad Company as of June 30, 1912, is the sum of \$213,746.84.

##### 5. *Reproduction Value.*

The term "reproduction value," as used in this opinion, means the estimated cost in cash of acquiring the operative right of way and other real estate and of reproducing in the condition in which it was acquired the other operative physical property of the Stockton Terminal and Eastern Railroad Company as of June 30, 1912, to which are added overhead expenditures for engineering, law, interest and commissions and similar items.

As hereinbefore stated, this Commission's engineering department made a careful inspection on the ground of all the railroad company's



property. To all items of labor or materials the department then applied unit prices applicable to this particular railroad. The price of materials used was the actual price for which materials of the different classes could be delivered at the location of the work as of June 30, 1912. The prices for grading were fixed after a careful investigation into a very large number of contract prices covering work actually performed in localities in the State of California under circumstances as nearly similar as possible to those which surrounded the grading on this particular railroad. The Commission's engineering department has secured a very large number of unit prices applicable to all possible items in a valuation, and covering a large variety of circumstances and conditions in the State of California and is using these prices in estimating the reproduction value of the different railroads of the State.

Careful investigation was made into real estate values. The market value at the time of the acquisition of the property and also at the present time was arrived at by interviews with persons familiar with its value living at Stockton and along the line of the railroad. As in all other cases of ascertaining the value of the real estate of a public utility, recent sales of property in the vicinity and the prices at which the land is now held by its owners were used in determining the market value. It appears that 37.6 per cent of the total area of the railroad company's operative real estate as of June 30, 1912, and real estate constituted in value 36.1 per cent of the total market value was donated.

I desire at this point to draw attention to the very material difference between the original cost of right of way and station grounds, estimated by this Commission's engineering department at \$16,151, and the reproduction value of the same, estimated at \$30,642. It will be noted that the reproduction value is almost twice the original cost. The reproduction value as estimated by this Commission's engineering department represents the amount of money which it would take at the present time to purchase all the railroad company's right of way and station grounds, on the assumption that none thereof would be donated. The difference between the original cost of real estate and the reproduction of the present value thereof, including the unearned increment, presents one of the most serious questions in connection with public utility valuations. I shall content myself here, as throughout this opinion, in finding actual facts and shall express no opinion as to whether or not in a rate-fixing inquiry it is just to the public to credit the utility with the present value of real estate in which very little or no money may have been actually invested by the utility.

The engineering department's reproduction value on right of way and station grounds was ascertained as follows: By the means hereinbefore indicated, the department ascertained the market value of the property at the time of its acquisition, which market value was found

to be 103 per cent of the money actually paid for the property. It should be borne in mind, however, that a large portion of the property was donated and that no account is taken of this property under the head of original cost. After ascertaining the market value of the property at the time of its acquisition, the department also ascertained the market value as of June 30, 1912, and then multiplied that value by 1.5. This multiple was applied for the reason that the investigations of the department throughout the State show that on an average it costs one and one half times the normal market value of abutting property to acquire right of way in country districts by purchase or condemnation for railroad purposes. In the absence of more definite information as affecting this particular railroad, this average multiple was used. At the hearing, the railroad company contended that the item of \$1,663.40 should be added to the estimates of this Commission's engineering department under the head of right of way and station grounds to cover the price paid for four certain lots in the city of Stockton. It appears, however, that these lots are already included in the department's estimates.

I desire now to refer to the difference in the estimates of reproduction value as shown in Exhibits "A" and "B" hereto attached, being the estimates respectively of the railroad company and the Commission's engineering department.

It will be noted that the total by which the railroad company's estimate of reproduction value exceeds this Commission's engineering department's estimate is the sum of \$53,923.96. Of this amount, \$44,790.31 is the difference in Class No. 55, "other expenditures," which item has hereinbefore been explained. As has already been pointed out, this item in so far as it exceeds the estimate of this Commission's engineering department, concerns the financing of the company and has nothing to do with the physical elements of the property. It should be noted in this connection that the Commission's engineering department has taken care of the item of interest during construction and of certain other items connected with the financing of the railroad under Class No. 54, "interest and commission 3 per cent."

After giving careful consideration to the evidence in this case, I am of the opinion that the following amounts should be added to the estimate of reproduction value as presented by this Commission's engineering department:

|  |            |
|--|------------|
| Grading .....                                      | \$1,026 61 |
| Pile and frame trestles.....                       | 1,338 10   |
| Ballast .....                                      | 8 90       |
| Fencing right of way.....                          | 33 74      |
| Crossings and signs.....                           | 19 40      |
| Engineering, 5 per cent on above.....              | 121 34     |
| Law expenses, 1 per cent on above.....             | 25 48      |
| Interest and commissions, 3 per cent on above..... | 77 21      |
| Total to be added.....                             | \$2,650 78 |

Next to the item of "other expenditures" hereinbefore discussed, the greatest difference under the head of reproduction value between the estimates presented by the railroad company and this Commission's engineering department occurs in the item of grading. The railroad company claims a total of about 24 cents per cubic yard for this grading, all of which is common or earth excavation. For the reason that this money was apparently spent, I have allowed all of it under the head of original cost. When it comes to ascertain the reproduction value, however, it is necessary to find whether or not the work can be done more cheaply than it actually was done. Of the 24 cents claimed by the railroad company, only 16 cents or 18 cents are for the original grading work. The other 6 cents or 8 cents are alleged to cover additional items, such as transportation of material, preparation of grade for track laying and unusual difficulties in connection with the performance of a relatively small piece of work in small units on force account. It appears that along most of the railroad company's line of railway rights of way only fifty feet wide were secured. If a wider right of way had been desired, it would have been necessary in many cases to have purchased or condemned the additional width. The railroad company contends that because of its narrow fifty-foot right of way, it was necessary to haul a considerable portion of its material instead of borrowing it from alongside the proposed embankments. It should be borne in mind that we are now addressing ourselves to the question of what it would cost to reproduce the grading as of June 30, 1912, under contract and in one continuous job. For that reason, while the performance of the work in small units by force account has raised the original cost of the railroad above what it would otherwise have been, these elements do not enter into the cost of reproducing the grading under the conditions herein outlined. It is very possible, however, that in reproducing the grading as of June 30, 1912, difficulties might be encountered which may not appear at first sight and which are generally taken care of under the head of contingencies.

The engineering department, in its estimate, allowed a price of 16 cents per cubic yard to reproduce the grading. In fixing this figure, the department had in mind a large number of contracts under which grading has actually been performed within the last few years in this State in territory of a character largely similar to that through which this railroad's line of railway has been constructed. It appears that some of these contracts have been let for amounts materially lower than those allowed by the department in this case. Some contracts have been let for work in territory substantially similar to that through which this railroad's line of railway runs for 14 cents and even for 12

cents per cubic yard. For that reason, the department's estimate, barring elements of unusual difficulty connected with this particular railroad, would be at least a fair and liberal one. Bearing in mind, however, that we are seeking to ascertain the cost of reproducing this particular railroad under the physical conditions in which that railroad finds itself, and not a railroad under ideal conditions in territory of a similar character, I am of the opinion that because of the element of train haul, and other difficulties surrounding the possible reproduction of this particular railroad and for which allowance has not been made in the form of an item for contingencies, it would be well to add one ~~per~~ cent per cubic yard, not that I am convinced that it will cost 17 cents per cubic yard, but in order to be absolutely fair to this railroad. I shall accordingly estimate the reproduction value of grading in this case at 17 cents per cubic yard. I desire to draw attention to the fact that the railroad company's apparent practice of continually adding to original cost items which are properly chargeable to maintenance of grading is one which can not be sanctioned by this Commission.

The item of \$1,338.10 for pile and frame trestles is added for the reason that through inadvertence it was omitted from the engineering department's reproduction value estimates. The item, however, was included under the department's statement as to original cost. The sum of \$1,338.10 represents the department's estimate of reproducing the items which were omitted. The items for ballast, fencing right of way, and crossings and signs have already been explained under the head of original cost. The entire original cost is allowed. The percentages added for engineering, law expenses and interest and commissions are self-explanatory.

Before leaving the subject of reproduction value, I desire to draw attention to the percentages allowed by the engineering department for overhead expenses, under the heads of engineering, law expenses, and interest and commissions. The item of 5 per cent for engineering includes what is usually termed engineering and also an item of about 1 per cent for organization expenses. The item of 1 per cent for law expenses is a liberal one. The item of interest and commissions, 3 per cent, includes primarily interest during construction. The engineering department has assumed that it would take one year to reproduce this railroad and that all the capital would be tied up half the time or half the capital all the time. The estimate of one year is a liberal one, for the reason that this property could probably be reproduced in considerably less time than one year on the assumption that the work is done in a single job.

On the evidence in this case, I find that the "reproduction value" cost of the operative physical property of the Stockton Terminal and

Eastern Railroad Company as of June 30, 1912, on the assumption that the work is done in one job, is not to exceed the sum of \$215,918.24.

#### 6. Present Value.

The term "present value," as used in this opinion, means the "reproduction value" less the diminution in the value of the physical elements of the property, due to use, age, obsolescence and inadequacy. While this value may, under certain circumstances, include appreciation as well as depreciation, no appreciation is found in this case. The term "depreciated reproduction value" may properly be used as alternative for the term "present value." It should be distinctly understood that when this Commission in this opinion and the engineering department in its estimates uses the term "present value," it is not intended to establish the ultimate fact of present value, as that term is ordinarily used, but rather the "depreciated reproduction value" of the physical elements of the operative property as of June 30, 1912.

In estimating the present value in this case, this Commission's engineering department made a careful investigation into the average life and salvage value of the different classes of material and labor, using the straight line method of depreciation. The table used by the engineering department as applicable to the facts of this case is as follows:

|                               | Average life. | Salvage value.   | Actual life. | Annual depreciation. <sup>1</sup> | Present value—percent new. |
|-------------------------------|---------------|------------------|--------------|-----------------------------------|----------------------------|
| Right of way.....             |               |                  |              |                                   | 100%                       |
| Grading.....                  |               |                  |              |                                   | <sup>2</sup> 100%          |
| Trestles, bridges.....        | 10            |                  | 2            | 10 %                              | 80%                        |
| Culverts, C. I.....           | 16            |                  | 2            | 6 %                               | 88%                        |
| Redwood ties.....             | 16            |                  | 2            | 6 %                               | 88%                        |
| Rails—new.....                | 25            | 36%              | 2            | 2½ %                              | 95%                        |
| Rails—relay (1910).....       | 15            | <sup>3</sup> 48% | 2            | 3½ %                              | <sup>4</sup> 93%           |
| Frogs and switches.....       | 25            | 36%              | 2            | 2½ %                              | 95%                        |
| Track fastenings, etc.....    | 12½           |                  | 2            | 8 %                               | 84%                        |
| Ballast.....                  | 10            |                  | 1½           | 10 %                              | 85%                        |
| Track laying, etc.....        |               |                  | 2            |                                   | <sup>4</sup> 93%           |
| Roadway tools.....            | 10            |                  | 2            | 10 %                              | 80%                        |
| Fencing.....                  | 15            |                  | 2            | 6⅔ %                              | 87%                        |
| Crossings, etc.....           |               |                  |              |                                   |                            |
| Station buildings, etc.....   | 10            |                  | 2            | 10 %                              | 80%                        |
| General office furniture..... | 20            |                  | 2            | 5 %                               | 90%                        |
| Other structures.....         | 10            |                  | 2            | 10 %                              | 80%                        |
| Engineering.....              |               |                  |              |                                   | 100%                       |
| Equipment.....                |               |                  |              | 7 %                               | 86%                        |
| Law expenses.....             |               |                  |              |                                   | 100%                       |
| Stationery, etc.....          |               |                  |              |                                   | 100%                       |

<sup>1</sup>Per cent—total cost "new" on "straight line" basis.

<sup>2</sup>Generally addition for "appreciation" made, but not in this case on account of roadbed not being maintained up to original cross-section.

<sup>3</sup>Depreciated on basis of rail being "new" and worth \$29 per ton at time of purchase. Scrap estimated at \$14 per ton.

<sup>4</sup>Depreciated on same basis as materials entering into construction of track.

Attention is hereby directed to the railroad company's estimate of present value, as shown in Exhibit "A" attached to this opinion, and this opinion, this Commission's engineering department's estimate as shown in Exhibit "B" attached to this opinion.

From a consideration of the evidence in this case I find that certain items should be added to the engineering department's estimate. These items, together with their estimated condition, are as follows:

| Item.                          | Condition<br>per cent. | Present<br>value. |
|--------------------------------|------------------------|-------------------|
| Grading .....                  | 100                    | \$1,026 61        |
| Pile and frame trestles.....   | 81                     | 1,087 76          |
| Ballast .....                  | 100                    | 8 90              |
| Fencing right of way.....      | 100                    | 33 74             |
| Crossings and signs.....       | 100                    | 19 40             |
| Engineering .....              | 100                    | 121 34            |
| Law expenses .....             | 100                    | 25 48             |
| Interest and commissions ..... | 100                    | 77 21             |
| Total to be added.....         |                        | \$2,400 44        |

Of the items so added, all with the exception of the item of \$1,087.76 for pile and frame trestles are equivalent in amount to similar items heretofore added under the head of reproduction value. The item of \$1,087.76 for pile and frame trestles represents an additional allowance under this account, which was overlooked in the engineering department's estimate and to which reference has hereinbefore been made under the head of reproduction value.

I find from the evidence in this case that the "present value," as hereinbefore defined, of the operative physical property of the Stockton Terminal and Eastern Railroad Company as of June 30, 1912, is not to exceed the sum of two hundred and two thousand one hundred eighteen and 27/100 (\$202,118.27) dollars.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of April, 1913.

## EXHIBIT "A."

Name of owner, Stockton Terminal and Eastern Railroad Company; operating company, same; from Stockton to Fine; miles, main line track, 13.23; miles, yard tracks, etc., 1.89; total, 17.12.  
Valuation as of June 30, 1912. Stockton Terminal and Eastern Railroad Company; Richard Sachse, field Inspector.

| Class No. | Form No. | I. C. C. Asset No. | Classes.   | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|--------------------|--|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                  | Right of way and station grounds.....                                | \$16,187 23    | \$30,642 00         | 100             | \$30,642 00    |
| 2         | 2        | 3                  | Real estate.....   |                |                     |                 |                |
| 3         | 3        | 4                  | Grading.....   | 12,221 50      | 12,221 50           | 100             | 12,221 50      |
| 4         | 4        | 5                  | Tunnels.....   |                |                     |                 |                |
| 5         | 5        | 6                  | Steel bridges and trusses.....                                       |                |                     |                 |                |
| 6         | 6        | 6                  | Pile and frame trestles.....   | 5,778 30       | 5,778 30            | 80              | 4,622 64       |
| 7         | 7        | 6                  | Culverts.....  | 665 53         | 665 53              | 88              | 585 67         |
| 8         | 8        | 7                  | Ties.....  | 32,405 21      | 32,828 90           | 88              | 28,589 43      |
| 9         | 9        | 8                  | Rails.....   | 63,111 78      | 64,048 30           | Var.            | 60,894 93      |
| 10        | 10       | 9                  | Frogs and switches.....  | 1,787 48       | 1,790 95            | 95              | 1,700 50       |
| 11        | 11       | 10                 | Track fastenings and other material.....                             | 6,965 58       | 6,948 60            | 84              | 6,248 78       |
| 12        | 12       | 11                 | Ballast.....   | 264 59         | 265 00              | 85              | 225 25         |
| 13        | 13       | 12                 | Tracklaying and surfacing.....                                       | 19,529 22      | 12,840 00           | 98              | 11,941 20      |
| 14        | 14       | 13                 | Roadway tools.....   | 1,147 98       | 1,006 93            | 80              | 805 30         |
| 15        | 15       | 14                 | Fencing right of way.....  | 4,130 92       | 4,130 92            | 87              | 3,563 90       |
| 16        | 16       | 15                 | Crossings and signs.....   | 751 25         | 751 25              | 84              | 631 06         |
| 17        | 17       | 16                 | Interlocking plants.....   |                |                     |                 |                |
| 18        | 18       | 16                 | Signal apparatus.....  |                |                     |                 |                |
| 19        | 19       | 17                 | Telegraph and telephone lines.....                                   |                |                     |                 |                |
| 20        | 20       | 18                 | Station buildings and fixtures.....                                  | 389 31         | 389 31              | 80              | 311 44         |
| 21        | 21       | 18                 | Platforms, walks, paving and curb.....                               | 122 00         | 139 20              | 80              | 111 36         |
| 22        | 22       | 19                 | General office buildings and fixtures.....                           | 753 53         | 733 53              | 90              | 660 18         |
| 23        | 23       | 20                 | Shop buildings and engine houses.....                                | 212 34         | 212 34              | 80              | 169 87         |
| 24        | 24       | 20                 | Transfer and turntables, cinder pits, etc.....                       | 242 75         | 242 75              | 80              | 194 20         |
| 25        | 25       | 20                 | Miscellaneous shop buildings and structures.....                     |                |                     |                 |                |
| 26        | 26       | 21                 | Shop machinery and tools.....  | 68 08          | 68 08               | 90              | 61 27          |
| 27        | 27       | 22                 | Water stations.....  | 266 86         | 266 86              | 80              | 213 49         |
| 28        | 28       | 23                 | Fuel stations.....   |                |                     |                 |                |
| 29        | 29       | 24                 | Grain elevators.....   |                |                     |                 |                |
| 30        | 30       | 25                 | Storage warehouses.....  |                |                     |                 |                |
| 31        | 31       | 26                 | Dock and wharf property.....   |                |                     |                 |                |
| 32        | 32       | 27                 | Electric light plants.....   |                |                     |                 |                |
| 33        | 33       | 28                 | Electric power plants.....   |                |                     |                 |                |
| 34        | 34       | 29                 | Electric power transmission.....                                     |                |                     |                 |                |
| 35        | 35       | 30                 | Gas producing plants.....  |                |                     |                 |                |
| 36        | 36       | 31                 | Miscellaneous structures.....  | 108 26         | 108 26              | 80              | 86 61          |
|           |          |                    | Total classes 1 to 36, inclusive.....                                | \$167,089 70   | \$176,078 51        |                 | \$164,810 57   |
| 37        |          | 1                  | Engineering, 5 per cent, 1 to 36, inclusive.....                     | 8,803 93       | 8,803 93            | 100             | 8,803 93       |
| 38        | 37       | 32                 | Transportation of men and material.....                              | 42 51          | 42 51               | 100             | 42 41          |
| 39        | 38       | 33                 | Rent of equipment.....   | 1,053 66       | 1,053 66            | 100             | 1,053 66       |
| 40        | 38       | 34                 | Repairs of equipment.....  | 280 82         | 280 82              | 100             | 280 82         |
| 41        |          | 35                 | Earning and operating expenses during construction.....              | 4,500 60       |                     |                 |                |
| 42        |          | 35 1/2             | Boarding house.....  | 1,055 33       |                     |                 |                |
| 43        |          | 36                 | Cost of road purchased.....  |                |                     |                 |                |
|           |          |                    | Total classes 1 to 43, inclusive.....                                | \$173,745 35   | \$186,259 43        |                 | \$174,991 49   |
| 44        | 39       | 37                 | Steam locomotives and auto cars.....                                 | 9,321 64       | 5,000 00            |                 | 3,000 00       |
| 45        |          | 38                 | Electric locomotives.....  |                |                     |                 |                |
| 46        | 40       | 39                 | Passenger train cars and motors.....                                 | 13,728 09      | 12,434 50           |                 | 11,759 50      |
| 47        | 41       | 40                 | Freight train cars.....  | 2,984 73       | 2,984 73            | 90              | 2,686 26       |
| 48        | 42       | 41                 | Work equipment.....  |                |                     |                 |                |
| 49        | 43       | 42                 | Floating equipment.....  |                |                     |                 |                |
|           |          |                    | Total classes 1 to 49, inclusive.....                                | \$198,779 81   | \$206,678 66        |                 | \$192,437 25   |
| 50        |          | 43                 | Law expenses, 1 per cent, classes 1 to 31, inclusive.....            | 1,987 80       | 2,066 79            | 100             | 2,066 79       |
| 51        | 44       | 44                 | Stationery and printing.....   | 103 20         | 103 20              | 100             | 103 20         |
| 52        | 44       | 45                 | Insurance.....   | 45 00          | 45 00               | 100             | 45 00          |
| 53        | 45       | 46                 | Taxes.....   | 9 50           | 9 50                | 100             | 9 50           |
|           |          |                    | Total classes 1 to 53, inclusive.....                                | \$200,125 31   | \$208,903 15        |                 | \$194,661 74   |
| 54        |          | 47                 | Interest and commission, 3 per cent, classes 1 to 31, inclusive..... | 6,267 09       | 6,267 09            | 100             | 6,267 09       |
| 55        | 45       | 48                 | Other expenditures.....  | 51,673 06      | 51,673 06           | 100             | 51,673 06      |
| 56        |          |                    | Contingencies, 1 per cent, classes 1 to 53, inclusive.....           |                |                     |                 |                |
| 57        | 46       |                    | Stores and supplies on hand for use in California.....               | 348 12         | 348 12              |                 | 348 12         |
|           |          |                    | Grand total.....   | \$259,213 58   | \$267,191 42        |                 | \$252,950 01   |
|           |          |                    | Average per mile for main line track.....                            | 17,019 93      | 17,478 68           |                 | 16,608 67      |

## EXHIBIT "B."

Name of owner, Stockton Terminal and Eastern Railroad Company; operating company, same; from Stockton to Finc, miles main line track, 15.25; miles yard track, etc., 1.89; total, 17.12.  
Valuation as of June 30, 1912. Richard Sachse, field inspector. Date compiled, June 27, 1912.

| Class No. | Form No. | I. C. C. Act No. | Classes.  | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|------------------|---|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                | Right of way and station grounds.....                                 | \$16,151 00    | \$30,642 00         | 100             | \$30,642 00    |
| 2         | 2        | 3                | Real estate.....  |                |                     |                 |                |
| 3         | 3        | 4                | Grading.....  | 11,683 75      | 7,821 76            | 100             | 7,821 76       |
| 4         | 4        | 5                | Tunnels.....  |                |                     |                 |                |
| 5         | 5        | 6                | Steel bridges and trusses.....  |                |                     |                 |                |
| 6         | 6        | 6                | Pile and frame trestles.....  | 5,778 30       | 3,276 32            | 80              | 2,621 06       |
| 7         | 7        | 6                | Culverts.....   | 669 53         | 437 90              | 88              | 385 35         |
| 8         | 8        | 7                | Ties.....   | 32,405 21      | 32,828 90           | 88              | 28,889 43      |
| 9         | 9        | 8                | Rails.....  | 63,111 78      | 61,048 30           | Var.            | 60,894 03      |
| 10        | 10       | 9                | Frogs and switches.....   | 1,787 48       | 1,700 00            | 95              | 1,700 50       |
| 11        | 11       | 10               | Track fastenings and other material.....                              | 6,965 58       | 6,948 60            | 84              | 6,248 78       |
| 12        | 12       | 11               | Ballast.....  | 264 59         | 265 00              | 85              | 225 25         |
| 13        | 13       | 12               | Tracklaying and surfacing.....  | 19,529 22      | 12,840 00           | 95              | 11,941 20      |
| 14        | 14       | 13               | Roadway tools.....  | 1,147 06       | 1,006 63            | 80              | 805 30         |
| 15        | 15       | 14               | Fencing right of way.....   | 4,097 18       | 3,340 85            | 87              | 2,906 54       |
| 16        | 16       | 15               | Crossings and signs.....  | 731 85         | 518 50              | 84              | 416 74         |
| 17        | 17       | 16               | Interlocking plants.....  |                |                     |                 |                |
| 18        | 18       | 16               | Signal apparatus.....   |                |                     |                 |                |
| 19        | 19       | 17               | Telegraph and telephone lines.....                                    |                |                     |                 |                |
| 20        | 20       | 18               | Station buildings and fixtures.....                                   | 389 31         | 181 00              | 80              | 144 80         |
| 21        | 21       | 18               | Platforms, walks, paving and curb.....                                | 122 00         | 139 20              | 80              | 111 36         |
| 22        | 22       | 19               | General office buildings and fixtures.....                            | 733 53         | 733 53              | 90              | 660 18         |
| 23        | 23       | 20               | Shop buildings and engine houses.....                                 | 212 34         | 212 34              | 80              | 169 87         |
| 24        | 24       | 20               | Transfer and turntables, cinder pits, etc.....                        | 242 75         | 242 75              | 80              | 194 20         |
| 25        | 25       | 20               | Miscellaneous shop buildings and structures.....                      |                |                     |                 |                |
| 26        | 26       | 21               | Shop machinery and tools.....   | 68 08          | 68 08               | 90              | 61 27          |
| 27        | 27       | 22               | Water stations.....   | 266 86         | 266 86              | 80              | 213 49         |
| 28        | 28       | 23               | Fuel stations.....  |                |                     |                 |                |
| 29        | 29       | 24               | Grain elevators.....  |                |                     |                 |                |
| 30        | 30       | 25               | Storage warehouses.....   |                |                     |                 |                |
| 31        | 31       | 26               | Dock and wharf property.....  |                |                     |                 |                |
| 32        | 32       | 27               | Electric light plants.....  |                |                     |                 |                |
| 33        | 33       | 28               | Electric power plants.....  |                |                     |                 |                |
| 34        | 34       | 29               | Electric power transmission.....                                      |                |                     |                 |                |
| 35        | 35       | 30               | Gas producing plants.....   |                |                     |                 |                |
| 36        | 36       | 31               | Miscellaneous structures.....   | 108 26         | 108 26              | 80              | 86 61          |
|           |          |                  | Total classes, 1 to 36, inclusive.....                                | \$166,466 58   | \$167,716 78        | 94              | \$157,140 62   |
| 37        | 37       | 1                | Engineering, 5 per cent, 1 to 36, inclusive.....                      | 10,876 29      | 8,385 84            | 100             | 8,385 84       |
| 38        | 38       | 32               | Transportation of men and material.....                               | 42 50          | 42 50               | 100             | 42 50          |
| 39        | 39       | 33               | Rent of equipment.....  | 1,053 66       | 1,053 66            | 100             | 1,053 66       |
| 40        | 40       | 34               | Repairs of equipment.....   | 280 82         | 280 82              | 100             | 280 82         |
| 41        | 41       | 35               | Earning and operating expenses during construction.....               | 4,560 60       |                     |                 |                |
| 42        | 42       | 35               | Boarding house.....   | 1,035 33       |                     |                 |                |
| 43        | 43       | 36               | Cost of road purchased.....   |                |                     |                 |                |
|           |          |                  | Total classes 1 to 43, inclusive.....                                 | \$175,194 58   | \$177,479 60        | 94              | \$166,903 44   |
| 44        | 44       | 37               | Steam locomotives and auto cars.....                                  | 8,333 14       | 5,000 00            | 60              | 3,000 00       |
| 45        | 45       | 38               | Electric locomotives.....   |                |                     |                 |                |
| 46        | 46       | 39               | Passenger train cars and motors.....                                  | 13,728 00      | 12,454 50           | 95              | 11,759 50      |
| 47        | 47       | 40               | Freight train cars.....   | 2,984 73       | 2,984 73            | 90              | 2,686 26       |
| 48        | 48       | 41               | Work equipment.....   |                |                     |                 |                |
| 49        | 49       | 42               | Floating equipment.....   |                |                     |                 |                |
|           |          |                  | Total classes, 1 to 49, inclusive.....                                | \$200,240 54   | \$197,808 83        | 96              | \$184,349 20   |
| 50        | 50       | 43               | Law expenses, 1 per cent, classes 1 to 49, inclusive.....             | 2,247 83       | 1,978 99            | 100             | 1,978 99       |
| 51        | 51       | 44               | Stationery and printing.....  | 103 20         | 103 20              | 100             | 103 20         |
| 52        | 52       | 45               | Insurance.....  | 45 00          | 45 00               | 100             | 45 00          |
| 53        | 53       | 46               | Taxes.....  | 9 50           | 9 50                | 100             | 9 50           |
|           |          |                  | Total classes 1 to 53, inclusive.....                                 | \$202,646 07   | \$200,035 52        | 93              | \$186,485 89   |
| 54        | 54       | 47               | Interest and commission, -- per cent, classes 1 to 53, inclusive..... | 3,182 19       | 6,001 07            | 100             | 6,001 07       |
| 55        | 55       | 48               | Other expenditures.....   | 6,882 75       | 6,882 75            | 100             | 6,882 75       |
| 56        | 56       | 48               | Contingencies, -- per cent, classes 1 to 53, inclusive.....           | 348 12         | 348 12              | 100             | 348 12         |
| 57        | 57       | 46               | Stores and supplies on hand for use in California.....                |                |                     |                 |                |
|           |          |                  | Grand total.....  | \$213,059 78   | \$213,267 46        | 93.7            | \$199,717 83   |
|           |          |                  | Average per mile for main line track.....                             | 13,888 13      | 14,003 12           | 93.7            | 13,113 45      |



## DECISION No. 619.

IN THE MATTER OF THE APPLICATION OF W. G. WADLEY,  
AND EMILY D. WADLEY, HIS WIFE, FOR AUTHORITY  
TO INCREASE RATES FOR WATER SERVICE TO PA-  
TRONS OF MANCHESTER HEIGHTS, LOS ANGELES  
COUNTY, CALIFORNIA.

## Application No. 392.

*Decided April 29, 1913.*

Applicants acquired, for \$4,000, a water system, which had been installed at a cost of about \$9,000, upon a tract of land. The water was sold by the original owners of the system to purchasers of lots in the tract at a flat rate of \$1.00 per month per lot minimum charge. This charge was continued by applicant until, to prevent alleged waste, meters were installed on the premises of certain consumers and the rates to such consumers increased on a meter system of charging. Upon notice that the permission of the Commission was requisite to an advance in rates, applicants petitioned the Commission to establish a flat rate of \$1.00 per month per lot where no meter was installed, with a proportionate additional charge for additional lots or fractions of lots, and that where meters were installed the rate be fixed at \$1.00 for 800 cubic feet and 10 cents per 100 cubic feet in excess thereof; to install meters where they consider it necessary and to collect \$12.50 for each installation of a meter, the consumer to pay for such installation by paying 10 cents per 100 cubic feet for water used in excess of the minimum of 800 cubic feet until said installation of meter is paid for, and thereafter to be given 1,000 cubic feet per month for the minimum charge.

*Held*, (1) With respect to certain contentions advanced in behalf of the consumers, to wit: that the price paid by applicants for the property is the price upon which they should have fair returns and that the predecessors of applicants had contracted to deliver water for \$1.00 per month flat rate, neither of these points are well taken. In the fixing of reasonable rates to be paid by consumers, the Commission is concerned only with the fair value of the property used and useful to the public. Also, the Commission has heretofore decided (see Application No. 118 and Case No. 308) that it is not bound by such contracts entered into prior to the effective date of the Public Utilities Act. (2) If the owners believe a consumer is wasteful, they may install a meter at their own expense and must install meters at the expense of consumers when requested to do so, such expense to be refunded to consumers by allowing them a rebate of 10 cents per 100 cubic feet on all water used in excess of 1,000 cubic feet per month. In holding that the expense of installing meters should be borne by the owners of public utilities, we are reaffirming our decision in Application No. 5. As to who shall judge of the necessity of installing meters, we believe that each particular case or application will have to be decided upon its own merits, for the reason that, while we believe that often a measured service is by far the most desirable by reason of preventing waste and discrimination, we recognize that there are cases where the owners of public utilities are not financially able to install meters for all consumers and in such cases we believe that the owners of utilities should be permitted to pass upon the necessity for the installation of meters.

Order entered establishing flat rate of \$1.00 per month per lot of 60 feet maximum width, with additional charges for additional houses and excess frontage, and meter rate of \$1.00 per month per 1,000 cubic feet of water and 10 cents per each 100 cubic feet in excess thereof; also fixing hours of use of water for irrigation purposes.

*R. C. Hartshorn*, for Applicants.

*Coyne & Coyne*, for Manchester Heights Business Men's Association.

REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

OPINION.

Manchester Heights is a subdivision immediately adjoining the city of Los Angeles, consisting of 120 acres, divided into 700 lots. The water works, consisting of a well about 375 feet deep, with water which rises to within 50 or 60 feet of the surface, and the necessary water mains, pipes, stands, connections, etc., were installed when the 120 acres were platted to facilitate the sale of the property. After the owners of the property had sold it all, or practically all, the testimony shows that they sold the water plant to present applicants for \$4,000 although the cost of installation was said to be in the neighborhood of \$9,000. The plant was installed about 1908 and 1909.

Present owner and applicant, W. G. Wadley, testified that he had at different times had occasion to dig down to the pipe and that he had found it in good condition and that he considers the plant to be in good serviceable condition. No testimony was offered in any way reflecting upon the service. At the time the plant was installed the testimony showed that a flat rate of \$1.00 per month minimum was charged and that charge was continued by present owners, who are applicants herein, until they discovered that some of their patrons were wasting a great deal of water, whereupon they installed, at their own expense, about 10 meters, making the charge \$1.00 per month minimum for 1,000 cubic feet and 10 cents per 100 cubic feet for water in excess of the 1,000 cubic feet.

Complaint was received by the Commission from some of the consumers that applicants had advanced their rates and they were notified that rates could not be advanced without permission of the Commission, whereupon this application was filed in which they ask that the Commission establish a flat rate of \$1.00 per month per lot where no meter is installed, with a proportionate additional charge for additional lots or fractions of lots, and that where meters are installed the rate be fixed at \$1.00 for 800 cubic feet and 10 cents per 100 cubic feet in excess thereof; that applicants be permitted to install meters where they consider it necessary and to collect \$12.50 for each installation of a meter, the consumer to pay for such installation by paying 10 cents per 100 cubic feet for water used in excess of the minimum of 800 cubic feet until said installation of meter is paid for, and thereafter to be given 1,000 cubic feet per month for the minimum charge.

Applicant testified that his income from the sale of water was in the neighborhood of \$175 per month; that until quite recently he had a man employed at \$60 per month, but that he had found it impossible

to continue such employment and that he was now doing nearly all of the work himself and paying out about \$15 per month to have such work done as he could not do; that his bill for fuel had run as high as \$43 per month, and that his breakage and repair bills were in the neighborhood of \$30 to \$33 per month; that his well is liable at any time to fill up with sand, which would necessitate an expense of approximately \$1,000 to clean it out; that he does not desire, and is not able, to install meters for every consumer, and that his only desire in putting in any meters is to stop waste; that he is perfectly satisfied with a flat rate of \$1.00 per lot per month with proportionate increase for additional lots or fractions of lots, but that he would not expect any payment in excess of \$1.00 unless the consumer actually put water on something more than one lot. He testified that most of his consumers were careful and prudent in the use of water, but that some of them were not and that he had several times found the hydrants left open and running all night, wasting the water and emptying the tank which furnished the gravity flow.

Mr. C. B. Gordon, president of the Manchester Heights Business Men's Association, testified that he had lived in Manchester Heights for about five years; that his lot was 60 feet front; that when he bought the lot from the predecessors of applicants he had a verbal understanding that he was to receive water for his lot at the flat rate of \$1.00 per month. A majority of the lots in Manchester Heights are 40 to 45 feet frontage and it is for this size lots that applicants desire to furnish water at a flat rate of \$1.00 per month. Mr. Gordon's lot being 60 feet frontage, their application would comprehend the raising of his rate, to which he objects on the ground that he had an understanding as to the rate when he bought the lot. Mr. Gordon corroborated the testimony of applicant, Mr. Wadley, that he had known of instances where the water was wasted.

Applicants specifically ask that the Railroad Commission rule as follows:

- (1) That the flat rate of \$1.00 per month minimum apply to one lot only.
- (2) That each additional lot or over be assessed at the same rate.
- (3) That each house occupied on each lot have its own tap connection, even though owned by members of the same family.
- (4) That where meters have to be installed to prevent unnecessary waste or excessive use of water, that a minimum charge of \$1.00 be made.
- (5) That 800 cubic feet of water be the quantity given for \$1.00 until the excess amount of water used over that amount shall have paid \$12.00 for the meter; thereafter the amount of water to be 1,000 cubic feet for the minimum of \$1.00.

(6) That the time for irrigating be made between the hours of 5 and 9 o'clock a. m. and 4 and 9 o'clock p. m.

(7) That 10 cents per 100 cubic feet be charged for excess over the minimum.

(8) That these regulations be applied to the 10 meters installed since August, 1912.

The testimony of Mr. Gordon was to the effect that he believed applicants had in the neighborhood of 200 consumers, which, if correct, would make their income somewhat higher than that testified to by applicant.

Several other residents of Manchester Heights and consumers of water from this system were present, their testimony corroborating that of Mr. Gordon.

As before stated, no complaints were made as to the service or as to the \$1.00 per month flat rate, practically the only difference of opinion being as to whether the \$1.00 rate meant for one lot or for something additional for excess of one lot.

If the rates were being complained of, it would clearly be the duty of the Commission to have the fair value of the plant ascertained and to establish rates thereon. As the rates were not complained of, other than the difference of opinion as to the size of the lot, in an effort to conserve the time of the Commission it was sought to have the parties stipulate as to the value of the plant upon which applicants would be entitled to a fair return, and it finally was stipulated that applicants should procure from their predecessors and file with the Commission a verified statement as to the cost of installing the plant and that 5 per cent depreciation on machinery per year and 3 per cent depreciation on the pipe per year should be allowed.

However, it is clearly evident, even if Mr. Gordon's estimate of the income of the plant is correct, that a flat rate of \$1.00 per month would leave but a small income to applicants after paying the upkeep and expenses of operation; and, after giving the matter careful thought and consideration, I do not consider it necessary to delay deciding the application until the receipt of the statement as to cost of installation. I believe that our decision will be satisfactory to all concerned, particularly so in view of the evident desire manifested at the hearing by everybody to be fair.

I find as follows: That applicants' request that the flat rate of \$1.00 per month apply to one lot only is a reasonable one when such lot is occupied by but one family, and that the size of the lot shall be determined by the plat of the property as recorded, provided 60 feet shall be the maximum width of one lot. This may result in some small discrimination, but as some method of determining the size of the lot must be taken I regard this as the most reasonable one.

That each additional half lot or over shall pay an additional sum as follows:

If a consumer is paying \$1.00 per lot and if he owns an adjoining lot he shall pay \$1.50 for the two. If he owns a lot and one half, he shall pay \$1.25, provided, however, that he uses water on the additional land.

That where there is more than one house on a lot, the price shall be as follows:

For one occupied house on a lot, \$1.00.

For two occupied houses on a lot, \$1.50, each house to pay 75 cents.

If there are three or more occupied houses on a lot, the price shall be \$2.00 per lot, divided equally among the occupants thereon.

That where meters have been or have to be installed, the minimum charge shall be \$1.00 per month per 1,000 cubic feet, the cost of such installation of meters to be borne by the owner of the water company.

That the necessity for the installation of meters shall be determined by the owners of the water plant in the following manner:

If the owners believe a consumer is wasteful they may install a meter at their own expense, and must install meters at the expense of consumers when requested, such expense to be refunded to the consumers by allowing them a rebate of 10 cents per 100 cubic feet on all excess over 1,000 cubic feet per month.

That the request that a certain time be specified when water may be used for irrigation is a reasonable one and that the hours when water may be so used shall be from 5 until 10 o'clock a.m. and from 4 until 9 o'clock p. m.

That 10 cents per 100 cubic feet is a reasonable charge for excess over the minimum of 1,000 cubic feet; that the regulations as to meters herein found to be reasonable shall apply to the meters already installed.

In addition to the above, there remain two points to be considered, first, the point advanced by Mr. Coyne, counsel for Manchester Heights Business Men's Association, that the price paid by applicants for the property is the price upon which they should have fair returns; second, the point made by Mr. Gordon, that he had a contract with the predecessors of applicant that he was to receive water for \$1.00 per month flat rate. The Commission can not agree that either of these points are well taken. In the fixing of reasonable rates to be paid by consumers, the Commission is concerned only with the fair value of the property used and useful to the public. As to the point made by Mr. Gordon the Commission has heretofore decided (see Application No. 118 and Case No. 308) that it is not bound by contracts of this kind entered into prior to the effective date of the Public Utilities Act. In holding that the expense of installing meters should be borne by the

owners of public utilities, we are reaffirming our decision in Application No. 5. As to who shall judge of the necessity of installing meters, we believe that each particular case or application will have to be decided upon its own merits for the reason that, while we believe that often a measured service is by far the most desirable by reason of preventing waste and discrimination, we recognize that there are cases where the owners of public utilities are not financially able to install meters for all consumers and in such cases we believe that the owners of utilities should be permitted to pass upon the necessity for the installation of meters.

I recommend the following order:

**ORDER.**

W. G. Wadley and Emily D. Wadley, his wife, having applied to this Commission for authority to increase rates for water service to patrons of a water company owned and operated by them, located at Manchester Heights, Los Angeles County, California, and the application having been regularly heard and the testimony given at the hearing carefully considered and analyzed, the Commission holds:

That applicants' request that the flat rate of \$1.00 per month for water apply to one lot only is a reasonable one, provided the lot is occupied by but one family, and provided further, that the size of the lot shall be determined by the plat of the property as recorded, sixty feet to be the maximum width for one lot.

That additions to or in excess of one lot shall pay an additional sum as follows:

If a consumer is paying \$1.00 per lot and if he owns an adjoining lot he shall pay \$1.50 for the two. If he owns a lot and one half he shall pay \$1.25, and in such ratio for anything he may own in addition to one lot, provided the additional property joins the original lot, and provided, further, that he uses water on the additional land.

That where there is more than one house on a lot the price shall be as follows:

For one occupied house on lot, \$1.00;

For two occupied houses on lot, \$1.50, total, or 75 cents for each house.

If there are three or more occupied houses on a lot, the price shall be \$2.00 per lot divided equally among the occupants thereon.

That where meters have been or have to be installed, the minimum charge shall be \$1.00 per month per 1,000 cubic feet, the cost of such installation of meters to be borne by the owners of the water company.

That the necessity for the installation of meters shall be determined by the owners of the water plant in the following manner, to wit: if the owners believe a consumer is wasteful they may install a meter at their own expense and must install meters at the expense

of consumers when requested to do so, such expense to be refunded to consumers by allowing them a rebate of 10 cents per 100 cubic feet on all water used in excess of 1,000 cubic feet per month.

That the request that certain hours be specified when water may be used for irrigation is a reasonable one and that the hours when water may be so used shall be from 5 until 10 o'clock a. m. and from 4 until 9 o'clock p. m.

That 10 cents per 100 cubic feet is a reasonable charge for excess over the minimum of 1,000 cubic feet and that the regulation as to meters herein found to be reasonable shall apply to the meters already installed.

*It is therefore hereby ordered* that the rules, regulations and rates herein last above set forth shall obtain and apply to the service of water by W. G. Wadley and Emily D. Wadley, his wife, at Manchester Heights, Los Angeles County, California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of April, 1913.

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Decision No. 620, grade crossing; not printed. See end of volume.

DECISION No. 621.

IN THE MATTER OF THE APPLICATION OF THE ENCANTO  
MUTUAL WATER COMPANY TO INCREASE RATES FOR  
SERVICE TO ITS PATRONS AT ENCANTO, SAN DIEGO  
COUNTY, CALIFORNIA.

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Application No. 461.

*Decided April 29, 1913.*

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Applicant contracted with its consumers to supply water at 10 cents per thousand gallons. Subsequently it became obliged, by city ordinance, to pay 20 cents per thousand gallons for the water which it distributed. Pending a determination of the reasonableness of the 20 cent rate, *held*, a rate should be fixed which will at least give applicant enough to care for the actual operation of the system.

*Held*, That under all the present circumstances of the case, a rate of 25 cents per thousand gallons with a minimum charge of \$1.30 per month to each consumer is a just and reasonable rate.

*Harry R. Atwood*, for Applicant.

*S. A. Sackett*, for Consumers.

## REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

The applicant herein owns a water system supplying about 250 consumers in a suburban territory near the city of San Diego. It purchases the water which is distributed to its consumers from the San Diego City system heretofore owned by the Southern California Mountain Water Company. The system was originally constructed by the Richland Realty Company, a corporation which owned the land in this tract, which has been sold out to the present consumers of the Encanto Mutual Water Company. With the purchaser of each lot sold by the Richland Realty Company, the said Encanto Water Company, being an adjunct of the Richland Realty Company, entered into an agreement to deliver water as follows:

“Encanto Heights Mutual Water Company hereby agrees to supply water for domestic purposes and irrigation to -----, or his assigns, for use upon lot ----- in block ----- of Encanto Heights in the county of San Diego, State of California, and will deliver a sufficient supply thereof so long as it can obtain said water from its present source of supply in supply pipes of the system of said corporation, in the street in front of said lot, at the usual rates fixed by said corporation for the delivery of water in said vicinity, which said rates shall in no event be in excess of the sum of 10 cents per thousand gallons.”

On the 12th day of September, 1911, the board of supervisors of San Diego County passed Ordinance No. 193, wherein the rate at which the Southern California Mountain Water Company should deliver water was fixed at 20 cents per thousand gallons, and thereafter said Southern California Mountain Water Company began charging a rate to the Encanto Mutual Water Company of 20 cents per thousand gallons, but the rate charged to the consumers remained at 10 cents per thousand gallons until September, 1912, at which time the Encanto Mutual Water Company, notwithstanding the language of the contract heretofore referred to wherein it agreed that in no event should the water rate be raised beyond 10 cents per thousand gallons, sought to raise such rate to 25 cents a thousand gallons with a minimum monthly charge of \$1.50, but soon thereafter, and while such rate was supposed to be in effect, disposed of the system to the present owner, Harry R. Atwood, for approximately \$1500.

It is perfectly evident that the owner of this system cannot afford to pay 20 cents a thousand gallons for water and distribute it to consumers at the rate of 10 cents per thousand gallons; yet this condition of fact leads me to comment upon the viciousness of the contract of the Richland Realty Company heretofore referred to. This custom is entirely too prevalent and constitutes what I consider a fraud



on its face. The usual plan is for the land company to secure a tract of land for comparatively a small amount and thereafter, for the purpose of selling such land, to acquire a supply of water (in this case from a public service water company), and agree to insure the perpetual delivery of such water to the purchasers of lots at a very low cost. Such an arrangement, of course, gives a strong argument to the agent selling the lots, and the fact that the unsuspecting purchaser thinks that he will be insured a continuous supply of water at the very cheap rate enables the land company to sell its lots at a greater profit than would otherwise be the case. The usual outcome of this scheme is that the land company sells off its land and either abandons or unloads its system upon some none-too-suspicious buyer, who finds himself with contracts for the delivery of water, as in this case, which can not under any circumstances be fulfilled, and the inevitable application is made to this Commission, as here, to raise the rates. I consider that every cent of additional payment which the Richland Realty Company secured from the lots sold in Encanto which was secured by reason of its promise to deliver water at the rate of 10 cents per thousand gallons, such delivery to be perpetual, was obtained practically through false representations and fraud, and the only way in my mind those profiting by this arrangement could clear themselves of this imputation is by attempting to carry out the provisions of their contracts, at least until they had dissipated all of the profits which they had made from their land operations. A solemn obligation of even a land company, which usually seems to be a little bit more soulless than the ordinary corporation which is supposed to have no soul, under which such land company receives a consideration as was undoubtedly the case here, should not by honest men be treated as lightly as it seems to have been treated in this case. It is no defense to say that the purchasers of its lots have profited in that such lots have increased in value. This land company made a promise, as a result of which it reaped a benefit. It should not retain the benefit and repudiate the promise, even when such repudiation is secured by unloading the property upon a purchaser unable financially to endure the loss which necessarily follows from carrying out its contracts for water independent of the land venture.

It is admitted by the consumers that as long as the city of San Diego charges the owner of this system 20 cents per thousand gallons they cannot expect the present rate of 10 cents per thousand gallons to be maintained. The city of San Diego has intimated its intention to file an application to have all of its rates to outlying consumers fixed by this Commission, at which time a determination of the propriety of the 20-cent rate to the Encanto Mutual Water Company may be determined. Pending such determination a rate should be

fixed which will at least give the proprietor of this system enough to care for the actual operation of the system. It is hard to determine what such rate shall be, but from all the evidence in the case I believe that a rate of 25 cents per thousand gallons with a minimum charge of \$1.30 per month should pay the cost of securing the water from the city of San Diego, together with the actual cost of distributing the same, and the salary for half his time for Mr. Atwood, the proprietor of this system, which I will place at \$60 per month.

I, therefore, submit the following order:

ORDER.

Encanto Mutual Water Company having applied to this Commission for an order fixing the rates which shall be charged to its consumers of water within the county of San Diego, and a hearing having been held, and being fully advised in the premises,

The Commission hereby finds as a fact that under all the present circumstances of the case a rate of 25 cents per thousand gallons with a minimum charge of \$1.30 per month to each consumer is a just and reasonable rate; and

*It is hereby ordered* that the rate of 25 cents per thousand gallons, with a minimum charge of \$1.30 per month per consumer, is fixed and established as a just and reasonable rate to be charged by the said Encanto Mutual Water Company to its consumers within the county of San Diego, State of California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of April, 1913.

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DECISION No. 622.

SCOTT, MAGNER & MILLER ET AL.

vs.

SOUTHERN PACIFIC COMPANY.

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Case No. 228.

*Decided April 29, 1913.*

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REPORT OF THE COMMISSION.

The Commission having on April 15, 1913, in its decision in Case No. 283—*Scott, Magner & Miller et al. vs. Western Pacific Railway Company*—announced its conclusions upon the limits of the jurisdiction

of this Commission to award reparation, and it appearing to the Commission that the decision made in the above entitled case on June 14, 1912, does not conform to the conclusions announced in the Commission's decision in Case No. 283, *Scott, Magner & Miller et al. vs. Western Pacific Railway Company*;

*It is hereby ordered* that the above entitled case be reopened and the same is hereby set for rehearing before Commissioner Loveland on Wednesday, May 21, 1913, at 10 o'clock a. m., at the office of the Commission, 833 Market street, San Francisco, California.

By order of the Railroad Commission.

Dated at San Francisco, California, this 29th day of April, 1913.

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DECISION No. 623.

IN THE MATTER OF THE APPLICATION OF YUBA CITY  
WATER COMPANY TO SELL ITS WATER SYSTEM TO  
E. P. ANDROSS AND OF E. P. ANDROSS TO PURCHASE  
THIS SYSTEM.

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Application No. 455.

*Decided April 29, 1913*

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REPORT OF THE COMMISSION.

Yuba City Water Company having applied to this Commission for permission to sell its entire water system at Yuba City to E. P. Andross for \$3,000, in accordance with the contract of sale set forth in the application, and E. P. Andross having applied to this Commission for permission to purchase this system, and the Commission being fully advised in the premises, and it appearing that this is not a case in which a public hearing is necessary,

*It is hereby ordered* that Yuba City Water Company be and it hereby is authorized to sell for the sum of \$3,000 its entire water system situated at Yuba City, in accordance with the contract of sale set forth in the application in this proceeding, and that E. P. Andross be and he hereby is authorized to purchase said system, upon the following condition, and not otherwise, to wit:

The consideration of \$3,000 paid for the water system herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate fixing or other purposes the value of the property transferred.

By the Railroad Commission.

Dated at San Francisco, California, this 29th day of April, 1913.

## DECISION No. 624.

IN THE MATTER OF THE APPLICATION OF CITIZENS' LIGHT AND WATER COMPANY TO SELL AND THE CLAREMONT DOMESTIC WATER COMPANY TO PURCHASE PROPERTY OF THE CITIZENS' LIGHT AND WATER COMPANY, AND FOR AN ORDER AUTHORIZING THE ISSUE OF SEVENTY THOUSAND DOLLARS OF THE CAPITAL STOCK OF THE CLAREMONT DOMESTIC WATER COMPANY.

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Application No. 501.

*Decided April 29, 1913.*

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Engineers agreed upon by the city of Claremont and the Citizens' Light and Water Company having found the present value of the property to be transferred to be \$89,645, and this application being for the transfer of said property to Claremont Domestic Water Company at approximately \$79,000, the purchase not to be binding upon the Commission or any other rate fixing body in fixing rates, the application is granted.

*Edwin A. Meserve and W. A. Sumner, for Applicants.*

REPORT OF THE COMMISSION.

**ESHLEMAN, Commissioner.**

The applicant, Citizens' Light and Water Company, serves the city of Claremont and a few consumers adjacent thereto with water for domestic purposes. Its authorized capital stock is \$75,000, common, of which there is outstanding \$54,840 par value. There is no bonded indebtedness and the floating indebtedness is approximately \$8,500. The section served by this applicant is rapidly developing and extensions are necessary.

The applicant, Claremont Domestic Water Company, is controlled by the stockholders of the Citizens' Light and Water Company. Its authorized capital stock is \$100,000, and it desires to purchase the property of the Citizens' Light and Water Company by issuing \$70,000 of its authorized issue at par and assuming the current obligations of the Citizens' Light and Water Company, amounting to approximately \$8,500, and to issue hereafter the remaining \$30,000 of its \$100,000 authorized issue and sell the same at par for the purpose of securing funds for making the needed extensions in its system.

In February, 1912, at the instance of the board of trustees of the city of Claremont, a valuation was made of the property of Citizens' Light and Water Company by A. L. Sonderegger and Willis S. Jones, engineers agreed upon by the city of Claremont and the Citizens' Light and Water Company. These engineers found the present value

of the property to be at that time \$89,645. Inasmuch as the property is to be purchased by the Claremont Domestic Water Company at approximately \$79,000, and furthermore, the purchase price will not be binding upon this Commission or any other rate-fixing body in fixing rates, I deem it unnecessary to go further into the valuation presented by these engineers.

The result of granting this application will be to give the stockholders of the Citizens' Light and Water Company the same proportionate ownership in the Claremont Domestic Water Company as they now have in the Citizens' Light and Water Company, and in addition will afford a method of raising additional funds by sale of stock, which seems to me to be in all respects proper. I therefore recommend that the application be granted and submit the following order:

**ORDER.**

Citizens' Light and Water Company having applied to sell and the Claremont Domestic Water Company having applied to purchase all of the property of the Citizens' Light and Water Company, hereinafter more specifically described, and the Claremont Domestic Water Company having applied to issue and exchange at par \$70,000 par value of its capital stock for such property of the Citizens' Light and Water Company and to assume certain outstanding obligations of the Citizens' Light and Water Company, approximating \$8,500, and a hearing having been held, and being fully apprised in the premises,

The Commission hereby finds as a fact that the public convenience and necessity will be served by granting the application herein; and

Basing its order upon the foregoing finding of fact and the findings of fact in the opinion hereto, *it is hereby ordered:*

1. That the Citizens' Light and Water Company may sell, and the Claremont Domestic Water Company may purchase, all of the property of the Citizens' Light and Water Company in the county of Los Angeles in and around the city of Claremont in said county, said property being more particularly described as follows: All of the distribution system and mains and other appurtenances of whatsoever nature incident to and useful for the distribution of water within the city of Claremont and in territory adjacent thereto, being all the water system now owned by the Citizens' Light and Water Company, and the following described real estate situate in the county of Los Angeles, State of California:

Lot 11 in block 35 of Claremont, and the northeast quarter of the northeast quarter of the southwest quarter of the southeast quarter in section 33, township 1 north, range 8 west, S. B. M., five (5) acres in the southeast corner of the southwest quarter of the southeast quarter of section 33, described in metes and bounds as follows:

Beginning at the southeast corner of the southwest quarter of the southeast quarter of section 33; thence north along the line of said southwest quarter of the southeast quarter of section 33, 506.5 feet; thence at right angles west 430 feet; thence south parallel with the east line of the southwest quarter of the southeast quarter of section 33, 506.5 feet; thence east 430 feet to the point of beginning.

That certain portion of the southwest quarter of the northeast quarter of the southeast quarter, and of the northwest quarter of the southeast quarter of the southeast quarter of section 33, township 1 north, range 8 west, S. B. M., in the county of Los Angeles, bounded and particularly described as follows, to wit:

Beginning at a point on the south line of the southwest quarter of the northeast quarter of the southeast quarter of section 33, which is distant  $41\frac{1}{2}$  feet east of the intersection of said south line with the east line of the street running north and south along the west line of said land; running thence at right angles south  $4\frac{1}{2}$  feet; thence at right angles east  $33\frac{1}{2}$  feet; thence at right angles north  $72\frac{1}{2}$  feet; thence at right angles west  $33\frac{1}{2}$  feet; thence at right angles south 68 feet to the point of beginning.

Also, all of the right, title and interest of said Citizens' Light and Water Company in the following property:

Being the exclusive right to develop water on the southwest quarter and the northeast quarter of the southeast quarter of section 33, township 1 north, range 8 west, S. B. M., and the restricted right so long as said company and its successor or successors in interest shall furnish irrigation water for the same, on the northwest quarter and the southeast quarter of the southeast quarter of section 33, township 1 north, range 8 west, S. B. M.

2. The Claremont Domestic Water Company is authorized to issue 7,000 shares of its stock of the par value of \$70,000, and to deliver the same to the Citizens' Light and Water Company in exchange for the property hereinbefore described, and the Claremont Domestic Water Company is further authorized to assume the present outstanding indebtedness of the Citizens' Light and Water Company, approximating \$8,500.

The foregoing order is, and each part thereof, made with the following conditions:

1. The value of \$89,645 presented as an appraised value of the property herein authorized to be sold and purchased, or the purchase price herein authorized to be paid, shall not be binding upon this Commission or any other rate-fixing body for rate fixing purposes.

2. The fact of this exchange in ownership of the property shall not be used for the purpose of increasing or changing the rates for water delivered by the Claremont Domestic Water Company from the system which it is herein authorized to purchase.

3. The applicants hereto shall report to this Commission when the \$70,000 par value of stock is transferred to the Citizens' Light and Water Company and the property to the Claremont Domestic Water Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of April, 1913.

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Decisions Nos. 625, 626, and 627, grade crossings; not printed. See end of volume.

DECISION No. 628.

IN THE MATTER OF THE APPLICATION OF THE ARIZONA, CALIFORNIA AND NEVADA TELEPHONE COMPANY FOR ORDER AUTHORIZING THE SALE TO THE NEEDLES GAS AND ELECTRIC COMPANY OF THE LOCAL TELEPHONE EXCHANGE AT NEEDLES, CALIFORNIA, WITH EQUIPMENT, INCLUDING TELEPHONE POLES AND WIRE (BUT NOT INCLUDING THE LINE OF POLES CARRYING LONG DISTANCE WIRE FROM THE COLORADO RIVER TO THE NEEDLES TELEPHONE EXCHANGE), AND ALSO THE FRANCHISE TO OPERATE IN THE TOWN OF NEEDLES, CALIFORNIA. IN ACCORDANCE WITH SECTION 51, PUBLIC UTILITIES ACT OF THE STATE OF CALIFORNIA, APPROVED BY THE GOVERNOR DECEMBER 23, 1911.

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Application No. 488.

*Decided April 30, 1913.*

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Application of Arizona, California and Nevada Telephone Company for permission to sell its franchise and system in Needles to the Needles Gas and Electric Company granted, provided that the terms of transfer be so modified as to secure to the local operating company in Needles 30 per cent of originating tolls instead of 20 per cent.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This is an application to sell a telephone plant operated as a public utility in and about Needles, San Bernardino County, California. The application cites as the primary reason for making the sale "that the Needles exchange is so far distant from the principal place of business at Kingman, Arizona; also because the long distance line across the

Colorado River has been out of commission more or less of the time on account of high water; and that it has not been able to give what is considered the most satisfactory service to the public and this exchange has not been very profitable. The Needles Gas and Electric Company, having a well equipped plant at Needles, Cal., and the same being ably managed, are in better position to give more efficient service." These reasons for making this sale appear to be good ones in view of the fact that no material objection has developed to the terms of the sale nor to the conditions thereof except in one particular which I shall point out.

The Arizona, California and Nevada Telephone Company retains the toll equipment in and through Needles, and the agreement provides for a division of toll revenue with the local operating company on a basis of 20 per cent on the originating business to the local company. This Commission has had occasion to go carefully into the matter of the division of tolls between toll companies operating generally through a territory and local companies operating in restricted exchange areas, and the conclusion was reached that 30 per cent of originating tolls to the local companies was more equitable than the arrangements which the Commission found generally in effect, usually 15 per cent on originating tolls. This view of the Commission has been insisted on wherever this subject has come before the Commission and we know of no reason for differing in this instance from this general conclusion reached. I shall then recommend an order incorporating a modification to this effect.

I recommend the following form of order:

**ORDER.**

Application having been made by the Arizona, California and Nevada Telephone Company for order authorizing the sale to the Needles Gas and Electric Company of the local telephone exchange at Needles, California, with equipment, including telephone poles and wire (but not including the line of poles carrying long distance wire from the Colorado River to the Needles telephone exchange), and also the franchise to operate in the town of Needles, California, and a hearing having been held and being fully advised in the premises,

The Commission hereby finds as a fact that public convenience and necessity will be served by the granting of the application of the Arizona, California and Nevada Telephone Company to sell and the Needles Gas and Electric Company to buy the property hereinbefore referred to in the opinion hereto, conditioned on the applicants modifying their agreement so that the local operating company in Needles will be given 30 per cent of the originating tolls instead of 20 per cent as set out in the application.



*It is hereby ordered* that the application of the Arizona, California and Nevada Telephone Company for an order authorizing the sale to the Needles Gas and Electric Company of the local telephone exchange at Needles, California, with equipment, including telephone poles and wire (but not including the line of poles carrying long distance wire from the Colorado River to the Needles telephone exchange), and also the franchise to operate in the town of Needles, California, be and the same hereby is granted; provided that the terms of transfer be so modified as to secure to the local operating company in Needles 30 per cent of originating tolls instead of 20 per cent.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of April, 1913.

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DECISION No. 629.

IN THE MATTER OF THE APPLICATION OF BOCA AND LOY-  
ALTON RAILROAD COMPANY TO CANCEL CERTAIN COM-  
MODITY RATES IN EFFECT ON ITS LINE AND TO PUT IN  
A NEW SCALE OF CLASS RATES, AND APPLICATION  
OF F. W. GOMPH, JOINT AGENT FOR BOCA AND LOYAL-  
TON RAILROAD TO INCREASE THE JOINT RATE ON  
LUMBER FROM STARR AND DAVIES TO TRUCKEE.

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Application No. 482.

*Decided April 30, 1913.*

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Permission given Boca and Loyaltan Railroad Company to cancel the commodity rates now carried in its local freight tariff No. 7-A, C. R. C. No. 5, and to substitute certain rates therefor and to said company and Southern Pacific Company to cancel item No. 34, C. R. C. No. 6S, naming rate of \$1.50 per ton of 2,000 pounds on lumber, carloads, minimum weight 30,000 pounds, from Starr and Davies on line of applicant to Truckee on line of Southern Pacific Company and to substitute therefor a charge of \$1.90 per ton of 2,000 pounds.

*Allan P. Matthew and F. W. Gomph, for Applicants.*

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner.*

This is an application on the part of F. W. Gomph, joint agent for certain railroads in the State of California having through routes and joint rates, to increase the carload joint rate on lumber from Starr and Davies, California, to Truckee, California, applying over the Boca and Loyaltan and Southern Pacific Company's lines between these two

points, from \$1.50 per ton to \$1.90 per ton, and an application on the part of the Boca and Loyalton Railroad Company to increase certain commodity rates applying on that line between Boca, the terminus on the Southern Pacific, and Beckwith Junction, the terminus on the Western Pacific, and to readjust all of the class rates on said line. The readjustment of class rates, however, contemplates no increases.

It is in evidence that the principal commodity handled by the Boca and Loyalton, which is a line thirty-four miles in length and controlled by the Western Pacific Railway Company, is forest products, and that the output of forest products from the mills on this line is decreasing yearly.

Statements of revenue and expenses for the two years past show a decrease in revenue and a deficit in each of said years. While this may not always be a reason for an increase in rates still under the present circumstances I believe the application is well justified.

All of the lumber shippers on the line were notified and they interposed no objection to the granting of the application and I believe that under all the circumstances of the case the revised tariff presented with this application should be approved.

I submit the following form of order:

#### ORDER.

Boca and Loyalton Railroad Company having applied to this Commission for permission to cancel the commodity rates now carried in Boca and Loyalton Railroad Local Freight Tariff No. 7-A, C. R. C. No. 5, and to substitute therefor the rates set out in the tariff attached thereto and to make a part hereof and marked "Exhibit 1"; and F. W. Gompf, joint agent for Boca and Loyalton Railroad Company and the Southern Pacific Company having asked permission to cancel Item No. 34, C. R. C. No. 68, naming a rate of \$1.50 per ton of 2,000 pounds on lumber carloads, minimum weight 30,000 pounds, from Starr and Davies, California, on Boca and Loyalton Railroad to Truckee, California, on the lines of the Southern Pacific Company by way of Boca, California, and to substitute therefor a charge of \$1.90 per ton of 2,000 pounds on lumber carloads, minimum weight 30,000 pounds, between said points.

And a hearing having been held and being fully apprised in the premises *it is hereby ordered*—

1. That the rates set out in "Exhibit 1" attached hereto are established as just and reasonable rates to be charged by the Boca and Loyalton Railroad Company for the transportation of the commodities set out in said tariff between the points involved.

2. The joint rate of \$1.90 per ton of 2,000 pounds on lumber carloads, minimum weight 30,000 pounds, from Starr and Davies, California, on Boca and Loyalton Railroad, to Truckee, California, on the lines of the

Southern Pacific Company, is hereby established as a just and reasonable rate for such movement.

The applicants herein are instructed to print, distribute and file with this Commission a tariff setting out said rates herein established, to be effective ten (10) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of April, 1913.

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DECISION No. 630.

IN THE MATTER OF THE APPLICATION OF NORTHERN ELECTRIC RAILWAY COMPANY AND PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE SALE AND ASSIGNMENT OF A HIGH TENSION TRANSMISSION LINE BETWEEN NICOLAUS, IN THE COUNTY OF SUTTER, AND RIEGO, IN THE COUNTY OF PLACER, STATE OF CALIFORNIA, BY THE NORTHERN ELECTRIC RAILWAY COMPANY TO THE PACIFIC GAS AND ELECTRIC COMPANY.

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Application No. 460.

*Decided April 30, 1913.*

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Permission given the Northern Electric Railway Company to sell and the Pacific Gas and Electric Company to buy for \$11,876.46 a certain 60,000-volt transmission line, extending along the right of way of said railway company from Nicolaus to Riego.

*T. T. C. Gregory*, for applicant, Northern Electric Railway Company.

*C. P. Cutten*, for applicant, Pacific Gas and Electric Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Applicants ask for an order of this Commission authorizing the sale by the Northern Electric Railway Company to the Pacific Gas and Electric Company and the purchase by the latter company from the former, for the sum of \$11,876.46, of a certain 60,000-volt transmission line extending upon and along the right of way of the Northern Electric Railway Company from the substation on the line of the Northern Electric Railway at Nicolaus, in Sutter County, California, to the substation at Riego, in Placer County, California, a distance of about nine miles.

It appears that prior to March 23, 1912, the Northern Electric Railway Company, in order to obtain electric energy at Riego under its contract with the Valley Counties Power Company, a subsidiary corporation of the Pacific Gas and Electric Company, was required to build the aforesaid line from Nicolaus to Riego at an expense of some \$12,000.

It further appears that the Pacific Gas and Electric Company is engaged in the business of producing, transmitting and distributing electrical energy, and that the said transmission line must necessarily be utilized to deliver energy to the Northern Electric Railway Company at Riego, and as part of the necessary facilities of the Pacific Gas and Electric Company said line should have been constructed, maintained and operated by it, instead of by the consumer. The contract between the parties provides that the property shall be transferred free and clear of all liens and incumbrances.

In view of the facts hereinabove set forth, and in consideration of the further fact that \$11,876.46 appears to be a fair value to the Pacific Gas and Electric Company of the said transmission line and that said line can be made to better serve the public convenience and necessity if owned, maintained and operated by that utility, I submit the following form of order:

**ORDER.**

Northern Electric Railway Company and Pacific Gas and Electric Company having filed with this Commission their joint application for an order authorizing the sale and assignment of a certain high tension transmission line upon and along the right of way of the Northern Electric Railway Company between Nicolaus, in Sutter County, California, and Riego, in Placer County, California, a distance of some nine miles, by the said Northern Electric Railway Company to the said Pacific Gas and Electric Company, and a public hearing having been held on said application, at which hearing both parties to said application were present, and it appearing to the Commission that public convenience and necessity will be subserved by the granting of said application,

*It is hereby ordered* that the said application be and the same is hereby granted on the following conditions, and not otherwise, to wit:

(1) The price to be paid for said high tension transmission line upon and along the right of way of the said Northern Electric Railway Company between Nicolaus, in Sutter County, California, and Riego, in Placer County, California, shall not exceed the sum of \$11,876.46 in cash.

(2) Said sum of \$11,876.46 shall not hereafter be used before this Commission, or any other public authority, as representing for rate fixing or any other purpose the present value of said property.

The sale and transfer of said property by said Northern Electric

Railway Company, and its acquisition by said Pacific Gas and Electric Company shall be deemed a consent by each corporation to all the terms and conditions of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 30th day of April, 1913.

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DECISION No. 631.

IN THE MATTER OF THE APPLICATION OF G. K. ESTES FOR  
PERMISSION TO SELL HIS TELEPHONE PLANT AT  
MORGAN HILL TO T. H. DASSEL AND OF T. H. DASSEL  
FOR PERMISSION TO PURCHASE THIS PLANT.

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Application No. 408.

*Decided April 30, 1913.*

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Permission given to G. K. Estes to sell his telephone plant in and about Morgan Hill for \$2,425 and to T. H. Dassel to acquire same upon condition that the consideration shall not be taken, before the Commission nor any other public body, as representing, for rate fixing or other purposes, the value of the property. Also ordered that the toll revenues shall be divided between the Pacific Telephone and Telegraph Company and the local company so that the local company shall receive 30 per cent of originating tolls.

*G. K. Estes and T. H. Dassel, in propria persona.*

*E. A. Colby, for Protestants.*

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

G. K. Estes is the owner of a telephone plant which is operated in and about Morgan Hill, Santa Clara County, California. G. K. Estes now desires to sell this telephone plant to T. H. Dassel. These two gentlemen have entered into a contract of sale, which is incorporated in the application in this proceeding, in which the property to be transferred is stated as follows:

“The telephone exchange property at Morgan Hill, consisting of all pole lines (about 75 poles), aerial cables, wire, drop wires, substation apparatus, booths and special fittings, exchange supplies, central office equipment, 77 telephone sets, and all tools and implements connected with said exchange; one share in the Diana Avenue Farmers' Telephone line.”

G. K. Estes also agrees to assign to T. H. Dassel the connecting agreement between himself and the Pacific Telephone and Telegraph

Company. For the transfer of this property the purchaser is to pay \$2,425.

At the hearing a number of the patrons of this telephone system appeared and protested against the granting of this application, these protestants having in mind the purchase and operation of this plant by themselves as a mutual company. This plan of the protestants, however, was abandoned and the opposition to the granting of this application withdrawn.

The hearing disclosed two matters to which I wish to draw attention. The first of these matters is that the ringing power used in this telephone plant is inadequate. This was called to the attention of Mr. T. H. Dassel, and he stipulated at the hearing that as soon as the plant was transferred to him he would correct this weakness. The second of these matters is that the existing connecting agreement between the Pacific Telephone and Telegraph Company and G. K. Estes, which agreement will, under the transfer, be assigned to T. H. Dassel, should be modified in important particulars. The agreement should be amended so as to provide that in the division of toll revenues between the long distance company and the local operating company the local company shall receive thirty per cent (30%) on originating tolls, or the equivalent thereof in payments divided on originating and incoming business.

The Commission's view as to the division of toll revenues is so well understood by both companies that it is expected that the connecting agreement involved in this case will be revised without delay.

I recommend that this application be granted, and submit herewith the following form of order:

**ORDER.**

G. K. Estes having applied to this Commission for permission to sell his telephone plant in and about Morgan Hill, Santa Clara County, California, for the sum of \$2,425, and T. H. Dassel having applied to this Commission for permission to purchase this plant, and a public hearing having been held upon this application,

*It is hereby ordered* that G. K. Estes be, and he hereby is, authorized to sell his telephone plant in and about Morgan Hill, Santa Clara County, California, for the sum of \$2,425, and that T. H. Dassel be, and he hereby is, authorized to purchase the same upon the following condition and not otherwise, to wit:

The consideration of \$2,425 given in exchange for the property herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate-fixing or other purposes, the value of the property to be transferred.

*It is further ordered* that on and after May 1, 1913, the toll revenues shall be so divided between the Pacific Telephone and Telegraph Com-

pany and the local company at Morgan Hill that the local company shall receive thirty per cent (30%) on originating tolls, or the equivalent thereof in payments divided on the originating and incoming business.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 30th day of April, 1913.

Decisions Nos. 632, 633, and 634, grade crossings; not printed. See end of volume.

#### DECISION No. 635.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR AUTHORITY TO ISSUE ITS FIRST MORTGAGE FIVE PER CENT SINKING FUND FORTY-YEAR GOLD BONDS TO AN AMOUNT OF THE FACE VALUE OF PRINCIPAL OF SUCH BONDS SUFFICIENT AT THE PRICE AT WHICH SAID BONDS MAY BE SOLD TO NET THREE MILLION NINE HUNDRED SEVENTY-ONE THOUSAND SEVEN HUNDRED THIRTY-ONE DOLLARS.

Application No. 357.

*Decided May 2, 1913.*

Order modifying original order with respect to purposes for which part of the proceeds of an authorized bond issue may be used.

#### REPORT OF THE COMMISSION.

##### SUPPLEMENTAL ORDER.

On the 11th day of March, 1913, this Commission made its order in the above entitled proceeding, whereby applicant was authorized to issue its first mortgage five per cent forty-year sinking fund gold bonds of the face value of \$4,411,000, under conditions set out in said order.

It was provided in said order that among the purposes for which the proceeds derived from the sale of said bonds should be spent, were the following.

##### Extensions for revenue:

G. M. O. No. 017—Tap from 22,000-volt Napa-Vallejo line to supply power to Vallejo Brick and Tile Co.----- \$3,264 00

##### Improvements to service:

G. M. O. No. 0102—Temporary 110,000-volt substation at Valona----- 19,820 00

G. M. O. No. 0104—Transformer sets at Richmond----- 7,370 00

G. M. O. No. 0109—Auxiliary 22,000-volt line from Napa to Santa Rosa via Oakville----- 62,218 00

Applicant has now filed a supplemental application asking that said order be modified to the extent of changing the purposes for which the above mentioned sums may be spent, to the following purposes:

|  |            |
|--|------------|
| 1. Miscellaneous line extensions and service connections in Napa District -----                        | \$3,264 00 |
| 2. Miscellaneous improvements to service in Oakland District---  | 27,190 00  |
| 3. Miscellaneous improvements to service in Santa Rosa District  | 1,500 00   |
| 4. Miscellaneous extensions and additions to distribution system for revenue in Napa District-----     | 9,000 00   |
| 5. Miscellaneous extensions and additions to distribution system for revenue in Petaluma District----- | 7,218 00   |
| 6. Miscellaneous improvements to distribution system in Petaluma District -----                        | 6,500 00   |
| 7. Miscellaneous additions to production system in Big Bend District -----                             | 12,000 00  |
| 8. Miscellaneous additions to distribution system in Island District -----                             | 8,000 00   |
| 9. Miscellaneous additions to transmission system-----   | 3,000 00   |
| 10. Miscellaneous additions to property for general utility purposes -----                             | 15,000 00  |

It has developed since the rendition of the prior order that it will be more advantageous to expend the money herein mentioned for the purposes now set out by applicant in this supplemental application, and it being proper that the proceeds from the sale of bonds be used for such purposes, and it appearing to the Commission that public interest will be served by modifying said order to the extent requested,

*Ordered* that applicant is hereby authorized to use part of the proceeds of the sale of the bonds heretofore authorized to be issued, for the following purposes, to wit:

|  |            |
|--|------------|
| 1. Miscellaneous line extensions and service connections in Napa District -----                        | \$3,264 00 |
| 2. Miscellaneous improvements to service in Oakland District---  | 27,190 00  |
| 3. Miscellaneous improvements to service in Santa Rosa District  | 1,500 00   |
| 4. Miscellaneous extensions and additions to distribution system for revenue in Napa District-----     | 9,000 00   |
| 5. Miscellaneous extensions and additions to distribution system for revenue in Petaluma District----- | 7,218 00   |
| 6. Miscellaneous improvements to distribution system in Petaluma District -----                        | 6,500 00   |
| 7. Miscellaneous additions to production system in Big Bend District -----                             | 12,000 00  |
| 8. Miscellaneous additions to distribution system in Island District -----                             | 8,000 00   |
| 9. Miscellaneous additions to transmission system-----   | 3,000 00   |
| 10. Miscellaneous additions to property for general utility purposes -----                             | 15,000 00  |

*It is further ordered* that the above mentioned purposes shall be in lieu and place of the following purposes set out in the order of March 11, 1913, to wit:

Extensions for revenue:

G. M. O. No. 017—Tap from 22,000-volt Napa-Vallejo line to supply power to Vallejo Brick and Tile Co.----- \$3,264 00

Improvements to service:

G. M. O. No. 0102—Temporary 110,000-volt substation at Valona ----- 19,820 00

G. M. O. No. 0104—Transformer sets at Richmond----- 7,370 00

G. M. O. No. 0109—Auxiliary 22,000-volt line from Napa to Santa Rosa via Oakville----- 62,218 00

52—RBD



provided that in all other respects said order of March 11, 1913, shall remain in full force and effect.

By order of the Railroad Commission.

Dated at San Francisco, California, this 2d day of May, 1913.

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DECISION No. 636.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE  
PROPERTY OF IRON MOUNTAIN RAILWAY COMPANY,  
IN THE STATE OF CALIFORNIA.

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Case No. 172.

*Decided May 2, 1913.*

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Proceeding upon motion of the Commission to ascertain various elements entering into the value of the property of respondent. Findings made as to facts respecting such elements but not as to the value of the property irrespective of the purpose for which the value is ascertained. The general procedure in railroad valuation cases, as laid down in Case No. 206, followed. As the terms thereof are defined in said case, the Commission finds: (1) the "reproduction value" of the operative physical property of respondent is the sum of \$301,022.16; (2) the "present value," June 30, 1912, of the operative physical property of respondent is the sum of \$227,803.77.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

OPINION AND FINDINGS.

This proceeding was brought on the Commission's initiative for the purpose of ascertaining various elements entering into the value of the property of Iron Mountain Railway Company. For the general procedure in these so-called railroad valuation cases and for a general description of the nature of the work performed by this Commission's engineering department in connection therewith, reference is hereby made to this Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of Stockton Terminal and Eastern Railway Company. As in that case so here also I shall make findings of fact and shall not make a finding on the question of the value of the property irrespective of the purposes for which the value is ascertained.

The terms "reproduction value" and "present value" as used by the Commission are defined in said opinion and findings in Case No. 206. As directed by the Commission, the Iron Mountain Railway Company filed with the Commission its inventory of the physical property and

partial estimate of the original cost of reproduction value and present value thereof. It stated that its original cost records had been lost or destroyed. No attempt was made by the company to furnish the Commission with final figures as to cost and value, as provided on the Commission's inventory and appraisal form, but a letter filed with the Commission transmitting the inventory which was dated July 8, 1912, and signed by Mr. William F. Kett, president of the company, advised that an estimate of the cost of the property had been made in 1896 aggregating \$315,250; also that certain amounts had been written off for depreciation since that date, leaving a value of \$291,000, which was carried on the books of the company as representing the cost of construction and equipment.

The Commission's engineering department made a detailed examination of the property on the ground, based upon all of the facts which could be ascertained with respect to the physical elements entering into the operative property as of June 30, 1912, prepared and filed with the Commission a report dated September 14, 1912, giving its estimate of the reproduction value and the present value of the property as of June 30, 1912, based upon the condition in which the property was found at that date. The final summary sheet of this report is hereto attached and marked "Exhibit A."

A hearing was called before the Commission in this case on February 3, 1913, which was adjourned and subsequently reset for April 26, 1913. The case was promptly called before the Commission on the latter date. No appearances were made on the part of the Railway Company. A letter, however, had been addressed to the Commission, dated April 18, 1913, and signed by William F. Kett, president of the company, which stated that he believed "the valuation placed by the Commission's engineer on the physical property of the Iron Mountain Railway to be fair, and it is not the intention of the Iron Mountain Railway to protest against the acceptance by the Commission of its engineer's report."

In view of the foregoing statement, I therefore find as a fact the reproduction value—as that term has heretofore been defined—of the operative physical property of Iron Mountain Railway Company is the sum of \$301,022.16.

I further find as a fact that the present value of the operative physical property of Iron Mountain Railway Company, as that term has heretofore been defined by the Commission as of June 30, 1912, is the sum of \$227,803.77.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of May, 1913.

## EXHIBIT "A."

Name of owner, Iron Mountain Railway Company; operating company, same; from Iron Mountain to Keswick, miles main line track, 10.65; miles yard tracks, etc., 1.65; total, 12.30 miles.  
Valuation as of June 30, 1913; Paul Thelen, field inspector and office compiler; date compiled, September 14, 1912.

| Class No.                                 | Form No. | I. C. C. Act No. | Classes.   | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|---|----------|------------------|--|----------------|---------------------|-----------------|----------------|
| 1   | 1        | 2                | Right of way and station grounds.....                                |                | \$1,290 00          | 100             | \$1,290 00     |
| 2   | 2        | 3                | Real estate .....  |                |                     |                 |                |
| 3   | 3        | 4                | Grading .....  | 113,123 46     |                     | 100             | 112,872 96     |
| 4   | 4        | 5                | Tunnels .....  | 5,839 50       |                     | 82              | 4,790 20       |
| 5   | 5        | 6                | Steel bridges and trusses.....                                       |                |                     |                 |                |
| 6   | 6        | 6                | Pile and frame trestles.....   | 27,814 91      |                     | 44              | 12,199 91      |
| 7   | 7        | 6                | Culverts .....   | 4,897 50       |                     | 61              | 2,977 18       |
| 8   | 8        | 7                | Ties .....   | 16,718 95      |                     | 44              | 7,352 88       |
| 9   | 9        | 8                | Rails .....  | 40,207 29      |                     | 45              | 18,224 21      |
| 10  | 10       | 9                | Frogs and switches.....  | 1,065 05       |                     | 33              | 351 06         |
| 11  | 11       | 10               | Track fastenings and other material.....                             | 5,540 41       |                     | 38              | 2,127 01       |
| 12  | 12       | 11               | Ballast .....  |                |                     |                 |                |
| 13  | 13       | 12               | Tracklaying and surfacing.....                                       | 7,597 00       |                     | 44              | 3,365 47       |
| 14  | 14       | 13               | Roadway tools .....  | 355 00         |                     | 59              | 210 00         |
| 15  | 15       | 14               | Fencing right of way.....  |                |                     |                 |                |
| 16  | 16       | 15               | Crossings and signs.....   | 15 80          |                     | 55              | 8 68           |
| 17  | 17       | 16               | Interlocking plants .....  |                |                     |                 |                |
| 18  | 18       | 16               | Signal apparatus .....   |                |                     |                 |                |
| 19  | 19       | 17               | Telegraph and telephone lines.....                                   |                |                     |                 |                |
| 20  | 20       | 18               | Station buildings and fixtures.....                                  |                |                     |                 |                |
| 21  | 21       | 18               | Platforms, walks, paving and curb.....                               |                |                     |                 |                |
| 22  | 22       | 19               | General office buildings and fixtures.....                           |                |                     |                 |                |
| 23  | 23       | 20               | Shop buildings and engine houses.....                                |                |                     |                 |                |
| 24  | 24       | 20               | Transfer and turntables, cinder pits, etc.....                       |                |                     |                 |                |
| 25  | 25       | 20               | Miscellaneous shop buildings and structures.....                     |                |                     |                 |                |
| 26  | 26       | 21               | Shop machinery and tools .....                                       |                |                     |                 |                |
| 27  | 27       | 22               | Water stations .....   | 1,130 00       |                     | 86              | 404 00         |
| 28  | 28       | 23               | Fuel stations .....  |                |                     |                 |                |
| 29  | 29       | 24               | Grain elevators .....  |                |                     |                 |                |
| 30  | 30       | 25               | Storage warehouses .....   |                |                     |                 |                |
| 31  | 31       | 26               | Dock and wharf property.....   |                |                     |                 |                |
| 32  | 32       | 27               | Electric light plants.....   |                |                     |                 |                |
| 33  | 33       | 28               | Electric power plants.....   |                |                     |                 |                |
| 34  | 34       | 29               | Electric power transmission.....                                     |                |                     |                 |                |
| 35  | 35       | 30               | Gas producing plants.....  |                |                     |                 |                |
| 36  | 36       | 31               | Miscellaneous structures .....                                       | 599 50         |                     | 57              | 340 00         |
| Total classes 1 to 36, inclusive.....     |          |                  |  |                | \$226,184 46        | 74              | \$166,514 07   |
| 37  | ---      | 1                | Engineering, 5 per cent, 1 to 36, inclusive.....                     |                | 11,309 22           | 100             | 11,309 22      |
| 38  | 37       | 32               | Transportation of men and material.....                              |                |                     |                 |                |
| 39  | 38       | 33               | Rent of equipment.....   |                |                     |                 |                |
| 40  | 38       | 34               | Repairs of equipment.....  |                |                     |                 |                |
| 41  | ---      | 35               | Earning and operating expenses during construction.....              |                |                     |                 |                |
| 42  | ---      | 35 1/2           | Injuries to persons.....   |                |                     |                 |                |
| 43  | ---      | 36               | Cost of road purchased.....  |                |                     |                 |                |
| Total classes 1 to 43, inclusive.....     |          |                  |  | \$229,002 04   | \$237,493 68        | 75              | \$177,823 29   |
| 44  | 39       | 37               | Steam locomotives .....  |                | 23,179 00           | 64              | 14,831 00      |
| 45  | ---      | 38               | Electric locomotives .....   |                |                     |                 |                |
| 46  | 40       | 39               | Passenger train cars.....  |                |                     |                 |                |
| 47  | 41       | 40               | Freight train cars.....  |                | 13,000 00           | 68              | 8,800 00       |
| 48  | 42       | 41               | Work equipment .....   |                |                     |                 |                |
| 49  | 43       | 42               | Floating equipment .....   |                |                     |                 |                |
| Total classes 1 to 49, inclusive.....     |          |                  |  |                | \$273,672 68        | 74              | \$201,454 29   |
| 50  | ---      | 43               | Law expenses, 1 per cent, classes 1 to 49, inclusive.....            |                | 2,736 73            | 100             | 2,736 73       |
| 51  | 44       | 44               | Stationery and printing.....   |                |                     |                 |                |
| 52  | 44       | 45               | Insurance .....  |                |                     |                 |                |
| 53  | 45       | 46               | Taxes .....  |                |                     |                 |                |
| Total classes 1 to 53, inclusive.....     |          |                  |  |                | \$276,409 41        | 74              | \$204,191 02   |
| 54  | ---      | 47               | Interest and commission, 3 per cent, classes 1 to 53, inclusive..... |                | 8,292 28            | 100             | 8,292 28       |
| 55  | 45       | 48               | Other expenditures .....   |                |                     |                 |                |
| 56  | ---      | ---              | Contingencies, 5 per cent, classes 1 to 53, inclusive.....           |                | 13,820 47           | 100             | 13,820 47      |
| 57  | 46       | ---              | Stores and supplies on hand for use in California.....               |                | 2,500 00            | 60              | 1,500 00       |
| Grand total .....                         |          |                  |  |                | \$301,022 16        | 76              | \$227,808 77   |
| Average per mile for main line track..... |          |                  |  |                | 28,264 99           | 76              | 21,369 41      |

## DECISION No. 637.

## IN THE MATTER OF ASCERTAINING VALUE OF THE PROPERTY OF YREKA RAILROAD COMPANY IN THE STATE OF CALIFORNIA.

Case No. 213.

*Decided May 2, 1913.*

Proceeding upon motion of the Commission to ascertain various elements entering into the value of the property of respondent. Findings made as to facts respecting such elements but not as to the value of the property irrespective of the purpose for which the value is ascertained.

The general procedure in railroad valuation cases, as laid down in Case No. 206, followed. As the terms thereof are defined in said case the Commission finds: (1) the "reproduction value" of the operative physical property of respondent, as of June 30, 1912, is the sum of \$133,340.80; (2) the "present value" of the operative physical property of respondent, as of June 30, 1912, is the sum of \$90,431.07.

Owing to the fact that no construction records could be secured, the Commission's engineering department made no attempt and did not report as to the original cost of said property.

## REPORT OF THE COMMISSION.

## OPINION AND FINDINGS.

LOVELAND, *Commissioner*.

This proceeding was brought upon the Commission's initiative for the purpose of ascertaining various elements entering into the value of the property of the Yreka Railroad Company. For the general procedure in these so-called railroad valuation cases, and for a general description of the nature of the work performed by this Commission's engineering department in connection therewith, reference is hereby made to this Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company. As in that case, so here also I shall make findings of fact, and shall not make a finding on the question of the value of the property irrespective of the purposes for which the value is ascertained.

The definitions of the terms hereinafter used of "reproduction value" and "present value" are defined in the said opinion and findings, Case No. 206.

As directed by the Commission, the Yreka Railroad Company filed with the Commission its inventory of physical property, together with a detailed statement of the "reproduction value" and "present value" thereof, as of June 30, 1912; also it filed a statement of the original cost of its property as of the same date by general accounts. The railroad company stated, however, that the statement of original cost sub-

mitted did not in fact represent the original cost as might have been ascertained from construction books and records, for the reason that such records were not in its possession. The statement of original cost had been prepared by the company in July, 1906, for the purpose of opening a regular set of books and creating a capital stock for the company, and was based upon such information as the company then had with respect to original cost supplemented by estimates prepared by its superintendent. To this estimate was added the cost of permanent improvements and betterments made between July 7, 1906, and June 30, 1912, making a total original cost on its books as of the latter date of \$129,343.77.

The final summary sheet of the inventory and appraisal furnished by the company is attached to this opinion, marked Exhibit "A."

In pursuance of instructions the Commission's engineering department has prepared and submitted a report, dated September 27, 1912, giving the "reproduction value" and "present value" of the physical elements of the operative property of the railroad as of June 30, 1912. The final summary sheet of this report is hereto attached and marked Exhibit "B." Owing to the fact that no construction records could be secured, the Commission's engineering department has made no attempt and does not report as to the original cost of the property.

A public hearing was held before the Commission in this proceeding on February 3, 1913, which was adjourned, and a rehearing subsequently held on April 26, 1913. On the latter date when the case was called no representatives of the Yreka Railroad Company appeared before the Commission to contest or question the report which had been filed by the Commission's engineering department. In my opinion, the values found by the Commission's engineering department and contained in the report hereinbefore referred to are fair and reasonable and represent values of the operative physical property of the Yreka Railroad Company upon the bases as hereinbefore defined.

I therefore find as a fact, from the evidence submitted in this case, that the "reproduction value," as that term has heretofore been defined, of the operative physical property of the Yreka Railroad Company, as of June 30, 1912, is the sum of \$133,340.80.

I also find as a fact, from the evidence submitted in this case, that the "present value," as that term has heretofore been defined, of the operative physical property of Yreka Railroad Company, as of June 30, 1912, is the sum of \$90,431.07.

The foregoing opinion and findings are hereby approved and ordered filed, as the opinion and findings of the Railroad Commission of the State of California.

Dated, San Francisco, California, this 2d day of May, 1913.

## EXHIBIT "A."

Name of owner, Yreka Railroad Company; operating company, same; from Montague to Yreka; miles main line track, 7.52; miles yard tracks, etc., .61; total, 8.13 miles.  
Valuation as of June 30, 1911; F. A. Reiser, field inspector and officer compiler; date compiled, June 27, 1912.

| Class No. | Form No. | I. C. C. Vol. No. | Classes.   | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|-------------------|--|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                 | Right of way and station grounds.....                                  | \$2,277 00     | \$4,397 00          |                 | \$4,397 00     |
| 2         | 2        | 3                 | Real estate .....  |                |                     |                 |                |
| 3         | 3        | 4                 | Grading .....  | 38,505 31      | 27,398 99           | 100             | 27,398 99      |
| 4         | 4        | 5                 | Tunnels .....  |                |                     |                 |                |
| 5         | 5        | 6                 | Steel bridges and trusses .....  |                |                     |                 |                |
| 6         | 6        | 6                 | Pile and frame trestles .....  | 3,271 10       | 7,400 00            | 70              | 5,080 00       |
| 7         | 7        | 6                 | Culverts .....   |                | 192 75              | 70              | 135 25         |
| 8         | 8        | 7                 | Ties .....   | 8,744 21       | 10,755 90           | 80              | 8,596 74       |
| 9         | 9        | 8                 | Rails .....  | 27,281 25      | 17,160 00           | 80              | 13,784 00      |
| 10        | 10       | 9                 | Frogs and switches .....   | 1,200 00       | 1,206 00            | 75/100          | 1,081 92       |
| 11        | 11       | 10                | Track fastenings and other material .....                              | 2,597 37       | 4,472 22            | 80/100          | 3,594 08       |
| 12        | 12       | 11                | Ballast .....  |                | 12,656 00           | 75              | 9,492 10       |
| 13        | 13       | 12                | Tracklaying and surfacing .....  | 3,271 10       | 5,092 60            | 70/100          | 3,681 88       |
| 14        | 14       | 13                | Roadway tools .....  |                | 154 80              | 35              | 52 00          |
| 15        | 15       | 14                | Fencing right of way .....   | 1,007 37       | 1,566 07            | 65              | 1,014 94       |
| 16        | 16       | 15                | Crossings and signs .....  | 37 52          | 42 52               | 70/100          | 40 67          |
| 17        | 17       | 16                | Interlocking plants .....  |                |                     |                 |                |
| 18        | 18       | 16                | Signal apparatus .....   |                |                     |                 |                |
| 19        | 19       | 17                | Telegraph and telephone lines .....                                    | 178 01         | 178 01              | 90              | 164 66         |
| 20        | 20       | 18                | Station buildings and fixtures .....                                   | 4,368 91       | 4,550 71            | 100             | 4,415 16       |
| 21        | 21       | 18                | Platforms, walks, paving and curb .....                                |                |                     |                 |                |
| 22        | 22       | 19                | General office buildings and fixtures .....                            |                |                     |                 |                |
| 23        | 23       | 20                | Shop buildings and engine houses .....                                 | 1,827 56       | 1,827 55            | 100             | 1,827 55       |
| 24        | 24       | 20                | Transfer and turntables, cinder pits, etc. .....                       | 2,138 35       | 2,138 35            | 100             | 2,138 35       |
| 25        | 25       | 20                | Miscellaneous shop buildings and structures .....                      |                |                     |                 |                |
| 26        | 26       | 21                | Shop machinery and tools .....   |                | 673 75              |                 | 209 50         |
| 27        | 27       | 22                | Water stations .....   | 1,667 68       | 1,318 28            | 95/75           | 1,190 00       |
| 28        | 28       | 23                | Fuel stations .....  |                |                     |                 |                |
| 29        | 29       | 24                | Grain elevators .....  |                |                     |                 |                |
| 30        | 30       | 25                | Storage warehouses .....   |                |                     |                 |                |
| 31        | 31       | 26                | Dock and wharf property .....  |                |                     |                 |                |
| 32        | 32       | 27                | Electric light plants .....  |                |                     |                 |                |
| 33        | 33       | 28                | Electric power plants .....  |                |                     |                 |                |
| 34        | 34       | 29                | Electric power transmission .....                                      |                |                     |                 |                |
| 35        | 35       | 30                | Gas producing plants .....   |                |                     |                 |                |
| 36        | 36       | 31                | Miscellaneous structures .....   | 450 00         | 600 00              | 100             | 450 00         |
| 37        | ---      | 1                 | Total classes 1 to 36, inclusive .....                                 | \$98,828 73    | \$103,781 50        |                 | \$88,834 79    |
| 38        | 37       | 32                | Engineering, 15 per cent, 1 to 36, inclusive .....                     | 6,485 20       |                     |                 |                |
| 39        | 38       | 33                | Transportation of men and material .....                               |                |                     |                 |                |
| 40        | 38       | 34                | Rent of equipment .....  |                |                     |                 |                |
| 41        | ---      | 35                | Repairs of equipment .....   |                |                     |                 |                |
| 42        | ---      | 35                | Earning and operating expenses during construction .....               |                |                     |                 |                |
| 43        | ---      | 35                | Injuries to persons .....  |                |                     |                 |                |
| 44        | ---      | 36                | Cost of road purchased .....   |                |                     |                 |                |
| 44        | 39       | 37                | Total classes 1 to 43, inclusive .....                                 | \$105,313 93   | \$103,781 50        |                 | \$88,834 79    |
| 45        | ---      | 38                | Steam locomotives .....  | 11,443 99      | 14,000 00           | 50/65           | 8,050 00       |
| 46        | 40       | 39                | Electric locomotives .....   |                |                     |                 |                |
| 47        | 41       | 40                | Passenger train cars .....   | 12,054 60      | 11,335 50           | 50/65           | 7,900 00       |
| 48        | 42       | 41                | Freight train cars .....   |                | 1,100 00            | 50              | 475 00         |
| 49        | 43       | 42                | Work equipment .....   |                |                     |                 |                |
| 50        | ---      | 43                | Floating equipment .....   |                |                     |                 |                |
| 50        | ---      | 43                | Total classes 1 to 49, inclusive .....                                 | \$128,812 52   | \$130,217 00        |                 | \$105,259 79   |
| 51        | 44       | 44                | Law expenses, ---per cent, classes 1 to 36, inclusive .....            |                |                     |                 |                |
| 52        | 44       | 45                | Stationery and printing .....  |                |                     |                 |                |
| 53        | 45       | 46                | Insurance .....  |                |                     |                 |                |
| 54        | ---      | 47                | Taxes .....  |                |                     |                 |                |
| 54        | ---      | 47                | Total classes 1 to 53, inclusive .....                                 | \$128,812 52   | \$130,217 00        |                 | \$105,259 79   |
| 55        | 45       | 48                | Interest and commission, ---per cent, classes 1 to 53, inclusive ..... |                |                     |                 |                |
| 56        | ---      | 49                | Other expenditures .....   |                |                     |                 |                |
| 57        | 46       | ---               | Contingencies, ---per cent, classes 1 to 53, inclusive .....           |                |                     |                 |                |
| 57        | ---      | ---               | Stores and supplies on hand for use in California .....                | 521 25         | 595 80              |                 | 527 38         |
| ---       | ---      | ---               | Grand total .....  | \$129,313 77   | \$130,812 80        |                 | \$105,787 17   |
| ---       | ---      | ---               | Average per mile for main line track .....                             | 17,200 00      | 17,395 32           |                 | 14,007 44      |

## EXHIBIT "B."

Name of owner, Yreka Railroad Company; operating company, same; from Montague to Yreka; miles main line track, 7.37; miles yard tracks, etc., .71; total 8.08 miles.  
Valuation as of June 30, 1912: W. A. Spalding, field inspector and office compiler; date compiled, August 15, 1912.

| Class No. | Form No. | I. C. C. Acc. No. | Classes.  | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|-------------------|---|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                 | Right of way and station grounds                                    |                | \$2,482 80          | 100             | \$2,482 80     |
| 2         | 2        | 3                 | Real estate   |                |                     |                 |                |
| 3         | 3        | 4                 | Grading   |                | 17,513 90           | 81              | 15,776 81      |
| 4         | 4        | 5                 | Tunnels   |                |                     |                 |                |
| 5         | 5        | 6                 | Steel bridges and trusses   |                |                     |                 |                |
| 6         | 6        | 6                 | Pile and frame trestles   | 5,514 84       | 60.7                |                 | 3,348 85       |
| 7         | 7        | 6                 | Culverts  | 671 15         | 25                  |                 | 167 79         |
| 8         | 8        | 7                 | Ties  | 11,490 81      | 55                  |                 | 6,319 94       |
| 9         | 9        | 8                 | Rails   | 28,558 88      | 49                  |                 | 13,904 90      |
| 10        | 10       | 9                 | Frogs and switches  | 852 20         | 68                  |                 | 579 06         |
| 11        | 11       | 10                | Track fastenings and other material                                 | 2,819 02       | 40                  |                 | 1,127 61       |
| 12        | 12       | 11                | Ballast   | 2,800 00       | 75                  |                 | 2,100 00       |
| 13        | 13       | 12                | Tracklaying and surfacing   | 6,764 00       | 52                  |                 | 3,517 28       |
| 14        | 14       | 13                | Roadway tools   | 151 80         | 50                  |                 | 77 40          |
| 15        | 15       | 14                | Fencing right of way  | 1,538 75       | 35                  |                 | 538 56         |
| 16        | 16       | 15                | Crossings and signs   | 164 24         | 78                  |                 | 128 82         |
| 17        | 17       | 16                | Interlocking plants   |                |                     |                 |                |
| 18        | 18       | 16                | Signal apparatus  |                |                     |                 |                |
| 19        | 19       | 17                | Telegraph and telephone lines                                       | 173 61         | 80                  |                 | 142 41         |
| 20        | 20       | 18                | Station buildings and fixtures                                      | 4,625 71       | 90                  |                 | 4,257 29       |
| 21        | 21       | 18                | Platforms, walks, paving and curb                                   |                |                     |                 |                |
| 22        | 22       | 19                | General office buildings and fixtures                               |                |                     |                 |                |
| 23        | 23       | 20                | Shop buildings and engine houses                                    | 1,963 90       | 82                  |                 | 1,629 96       |
| 24        | 24       | 20                | Transfer and turntables, clinder pits, etc.                         | 2,208 35       | 80                  |                 | 1,744 76       |
| 25        | 25       | 20                | Miscellaneous shop buildings and structures                         |                |                     |                 |                |
| 26        | 26       | 21                | Shop machinery and tools  | 921 03         | 66                  |                 | 607 43         |
| 27        | 27       | 22                | Water stations  | 1,268 28       | 70                  |                 | 894 62         |
| 28        | 28       | 23                | Fuel stations   |                |                     |                 |                |
| 29        | 29       | 24                | Grain elevators   |                |                     |                 |                |
| 30        | 30       | 25                | Storage warehouses  |                |                     |                 |                |
| 31        | 31       | 26                | Dock and wharf property   |                |                     |                 |                |
| 32        | 32       | 27                | Electric light plants   |                |                     |                 |                |
| 33        | 33       | 28                | Electric power plants   |                |                     |                 |                |
| 34        | 34       | 29                | Electric power transmission   |                |                     |                 |                |
| 35        | 35       | 30                | Gas producing plants  |                |                     |                 |                |
| 36        | 36       | 31                | Miscellaneous structures  | 875 00         | 75                  |                 | 255 00         |
| 37        | ---      | 1                 | Total classes 1 to 36, inclusive                                    |                | \$92,895 67         |                 | \$59,690 38    |
| 38        | 37       | 32                | Engineering, 5 per cent, 1 to 36, inclusive                         |                | 4,644 78            |                 | 4,644 78       |
| 39        | 38       | 33                | Transportation of men and material                                  |                |                     |                 |                |
| 40        | 38       | 33                | Rent of equipment   |                |                     |                 |                |
| 41        | 38       | 34                | Repairs of equipment  |                |                     |                 |                |
| 42        | 35       | 35                | Earning and operating expenses during construction                  |                |                     |                 |                |
| 43        | 35       | 35                | Injuries to persons   |                |                     |                 |                |
| 44        | 39       | 37                | Cost of road purchased  |                |                     |                 |                |
| 45        | 39       | 37                | Total classes 1 to 43, inclusive                                    |                | \$97,540 45         |                 | \$64,335 16    |
| 46        | 40       | 38                | Steam locomotives   | 10,000 00      | 55                  |                 | 5,500 00       |
| 47        | 41       | 39                | Electric locomotives  |                |                     |                 |                |
| 48        | 42       | 40                | Passenger train cars  | 11,489 60      | 60                  |                 | 6,855 16       |
| 49        | 43       | 41                | Freight train cars  | 950 00         | 40                  |                 | 380 00         |
| 50        | 44       | 42                | Work equipment  |                |                     |                 |                |
| 51        | 45       | 42                | Floating equipment  |                |                     |                 |                |
| 52        | 44       | 44                | Total classes 1 to 49, inclusive                                    |                | \$119,980 05        |                 | \$77,070 32    |
| 53        | 45       | 46                | Law expenses, 1 per cent, classes 1 to 36, inclusive                |                | 928 96              | 100             | 928 96         |
| 54        | 47       | 47                | Stationery and printing   |                |                     |                 |                |
| 55        | 48       | 48                | Insurance   |                |                     |                 |                |
| 56        | 49       | 49                | Taxes   |                |                     |                 |                |
| 57        | 50       | 50                | Total classes 1 to 53, inclusive                                    |                | \$120,909 01        |                 | \$77,999 28    |
| 58        | 51       | 51                | Interest and commission, 2 1/2 per cent, classes 1 to 53, inclusive |                | 3,022 73            | 100             | 3,022 73       |
| 59        | 52       | 52                | Other expenditures  |                |                     |                 |                |
| 60        | 53       | 53                | Contingencies, 5 per cent, classes 1 to 53, inclusive               |                | 6,045 45            | 100             | 6,045 45       |
| 61        | 54       | 54                | Stores and supplies on hand for use in California                   |                | 3,863 61            | 100             | 3,863 61       |
| 62        | 55       | 55                | Grand total   |                | \$133,340 80        | 68              | \$90,481 07    |
| 63        | 56       | 56                | Average per mile for main line track                                |                | 18,092 37           |                 | 12,270 16      |

## DECISION No. 638.

E. B. AND A. L. STONE COMPANY  
*vs.*  
SOUTHERN PACIFIC COMPANY.

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Case No. 374.

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*Decided May 2, 1913.*

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Complainant, proposing to make shipments of crushed rock, etc., estimated at 500 tons per day, over defendant's lines, offered to construct certain tracks beginning at defendant's right of way and extending on private property to complainant's plant, provided defendant would construct, at its own expense, such spur tracks as would be necessary upon its own right of way to connect with complainant's tracks. Upon defendant's refusal, complainant petitioned the Commission for relief, under sections 25 and 39-a of the Public Utilities Act. Defendant denied the right of complainant to require it to construct at its own entire expense, either on its own right of way or elsewhere, such tracks as may be necessary or convenient for the proposed shipments, and denied the authority of the Commission to require it to participate to any extent whatsoever in the construction of tracks off its right of way for the purpose of serving private industries. Defendant further maintained that the proposed tracks, if constructed at its own expense, would entail a loss which could not be recovered out of the prospective revenue to be derived from the shipment or the commodity in question.

*Held*, The Public Utilities Act does not confer upon the Commission the power to require that a railroad corporation shall construct tracks for private industries off of or beyond the limits of its right of way, or participate in the expense of constructing any such tracks, except at its own pleasure. Whether or not railroad corporations of this State have heretofore, in certain instances, participated in such expense, can have no bearing upon this case. If, however, complainant constructs its private track from its plant up to the right of way of defendant, then this Commission has power to require defendant to install a connection therewith and provide the necessary tracks to connect therewith to properly handle the business of complainant upon such terms as the Commission may prescribe. Application granted.

*A. L. Stone*, for Complainant.

*Geo. D. Squires* and *H. C. Booth*, for Defendant.

## REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

On March 7, 1913, E. B. and A. L. Stone Company, a corporation, filed with the Commission a petition to require Southern Pacific Company to construct spur track facilities at Coyote Station, Santa Clara County, California, to serve a proposed crushed rock, sand and gravel plant being constructed by complainant on Coyote Creek near said station. Complainant stated that on December 23, 1912, it addressed a letter to Thomas A. Ahern, superintendent Coast Division, Southern Pacific Company, requesting said company to construct said spur facilities to said proposed plant, in accordance with the usual custom of railroad companies on the Pacific coast, viz: that the railroad com-



pany furnish the necessary rails, fastenings and switches, and the applicant—meaning the complainant in this case—provide the necessary ties, grading and labor to complete the tracks. Defendant having refused to grant this request, complainant has petitioned the Commission to require defendant to construct said tracks.

After due notice a hearing was held upon the petition on April 29th, at which the parties complainant and defendant were represented and testimony taken concerning the matters referred to therein.

The power of the Commission is invoked in this petition in pursuance of sections 25 and 39-a, of the Public Utilities Act of the State of California, effective March 23, 1912, to require defendant to construct proper spur track facilities to plant of complainant. Complainant testified that it is willing to stand the cost of the necessary grading, ties and labor to construct certain tracks, beginning at the right of way line of defendant and extending on private property to its plant, provided defendant will provide at its own expense the necessary rails, fastenings and switches for said track. Complainant maintains that defendant should construct at its own expense such additional tracks as may be necessary upon its own right of way to properly care for and handle business which will be tendered it by complainant.

Complainant stated that it proposed to ship, within a reasonable time, at the rate of approximately five hundred tons per day, over the lines of defendant, several hundred thousand tons of crushed rock, sand and gravel, but does not guarantee or indicate either in the petition or testimony that sufficient business will be given to defendant to warrant its incurring the entire expense called for.

Defendant denies the right of complainant to require it to construct at its own entire expense, either upon its own right of way or elsewhere, such tracks as may be necessary or convenient for the purpose of delivering cars and receiving freight to and from complainant's private tracks, and denies the authority of the Commission to require in any case that it shall participate to any extent whatever in the construction of tracks off of its right of way for the purpose of serving private industries. Defendant further maintains that to construct at its own expense the tracks prayed for by complainant would entail a loss which could not be recovered out of such revenue as will probably be derived from the shipment of the low grade commodities which complainant proposes to deliver to it.

Section 25 of the Public Utilities Act provides that every railroad corporation may be required to connect its railroad with the private tracks of any shipper, or contemplated shipper, or receiver of freight, provided such connection is reasonably practicable, and does not increase the hazard of the operation of its railroad, and further that the business which may reasonably be expected to be derived would justify the ex-

pense of such connection. Section 39-a of said act, provides that the Commission shall have the power to require that such connection be made by a railroad corporation, including the terms thereof; further, that the Commission shall have the power to require construction of necessary spurs or tracks and to apportion expense of same between the parties, provided that such connection and use can be made without unreasonable interference with the rights of the railroad.

Before passing upon the petition we will ascertain the power of the Commission in such matters. Primarily it is evident that the Public Utilities Act does not confer upon the Commission the power to require that a railroad corporation shall construct tracks for private industries off of or beyond the limits of its right of way, or participate in the expense of constructing any such tracks, except at its own pleasure. Whether or not railroad corporations of this State have heretofore, in certain instances, participated in such expense, can have no bearing upon this case. The Commission must confine itself to the authority conferred upon it under the terms of the act.

Having in mind the provisions of the act, the Commission holds that it is without authority to require defendant in this case to participate to any extent in the cost of constructing the track of complainant outside of the limits of the defendant's right of way. If, however, complainant constructs its private track from its plant up to right of way of defendant, then this Commission has power to require defendant to install a connection therewith and provide the necessary tracks to connect therewith to properly handle the business of complainant upon such terms as this Commission may prescribe.

The business which will be tendered defendant at Coyote Station by reason of construction of the proposed plant of complainant, in my opinion, will reasonably justify the Commission requiring defendant to construct sufficient tracks upon its own right of way for the accommodation of defendant's proposed business, and to make connection with complainant's proposed track which will extend from defendant's right of way line to the plant, upon the terms and conditions which are hereinafter specified; and I further find that such connection can be made without materially increasing the hazard of the operation of the railroad with which such connection is sought.

I, therefore, recommend the following form of order:

#### ORDER.

E. B. and A. L. Stone, a corporation, having on March 7, 1913, filed with the Commission a petition to require Southern Pacific Company to construct certain track facilities upon its right of way and to share in the expense of constructing certain additional tracks upon private property to serve the proposed stone, sand and gravel plant of com-

plainant on Coyote Creek, near the town of Coyote, Santa Clara County, California, said tracks being fully shown upon the map attached to the application, and it appearing to the Commission that a public hearing has been held, at which all interested parties were duly represented; and it further appearing to the Commission that it can not legally require defendant to participate in the cost of constructing tracks outside of its right of way limits, but that it can legally require defendant to participate in the cost of constructing certain tracks upon its right of way, upon a basis hereinafter provided, for the accommodation of complainant's proposed business, and to make connection with complainant's track, when constructed, at the limits of its right of way.

*It is hereby ordered* that Southern Pacific Company be, and it is hereby, required, to furnish at its own cost the necessary rails, fastenings and switches for certain tracks to be constructed upon its right of way at Coyote Station to serve the proposed business and connect with the proposed tracks which are to be constructed by complainant for the purpose of handling cars to and from its proposed rock, sand and gravel plant on Coyote Creek, said tracks upon said right of way to aggregate approximately twenty-five hundred and twenty-five feet in length, and including three switches, as shown upon the map attached to the petition. The complainant shall, at its own cost, do the necessary grading, provide the necessary ties, and furnish the necessary labor for the construction of said tracks upon said right of way in good and first-class condition, to the satisfaction of defendant, which shall also include the cost of moving the present team track of defendant, now on the ground, to the new position indicated on the map, and which also shall include the cost of three additional cattle guards where crossing is made with the fences of defendant;

*And it is further ordered* that complainant shall, at its own expense, complete such tracks as may be necessary to reach its proposed plant on Coyote Creek, on private land, beginning at the right of way line of defendant and extending to said plant, and shall complete the necessary grading for the tracks on defendant's right of way hereinbefore referred to, before defendant shall be required to incur any cost whatever in securing and delivering any rails and other material, provided, however, that complainant shall have the right to enter into any agreement concerning the construction of said tracks and the apportionment of the cost of same, not provided for in this order, as may be satisfactory to defendant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of May, 1913.

## DECISION No. 639.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
COUNTIES GAS COMPANY OF CALIFORNIA FOR  
AUTHORITY TO ISSUE ADDITIONAL BONDS.

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Application No. 230.*Decided May 3, 1913.*

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## FOURTH SUPPLEMENTAL ORDER.

## REPORT OF THE COMMISSION.

The Commission having, on October 14, 1912, made an order in the above entitled proceeding authorizing Southern Counties Gas Company of California to issue from time to time its thirty-year 6 per cent first mortgage bonds in the aggregate amount of \$47,000, under its mortgage and deed of trust to Los Angeles Trust and Savings Bank, dated April 1, 1911, upon the condition, among others, that prior to each issuance of such bonds applicant shall have filed with the Commission a verified statement showing that the terms of said trust deed have been complied with fully, and the Commission shall have made a supplemental order permitting the issuance of such bonds;

And this Commission having, in supplemental orders, authorized Southern Counties Gas Company of California to issue, under the original order of this Commission, bonds to the amount of \$35,000;

And application having been made on May 1, 1913, by Southern Counties Gas Company of California for authority to issue an additional \$8,000 par value of said bonds, under the original order in this proceeding made by the Commission on October 14, 1912, and it appearing that applicant has complied with the terms and conditions of the mortgage and deed of trust before mentioned,

*It is hereby ordered* that Southern Counties Gas Company of California be and it is hereby authorized to issue sixteen of its thirty year, six per cent (6%) first mortgage bonds of the par value of \$8,000, upon the conditions set forth in this Commission's order in the above entitled proceeding made on October 14, 1912, which conditions are hereby made a part of this order.

By order of the Railroad Commission.

Dated at San Francisco, California, this 3d day of May, 1913.

## DECISION No. 640.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE  
PROPERTY OF THE LAKE TAHOE RAILWAY AND TRANS-  
PORTATION COMPANY IN THE STATE OF CALIFORNIA.

Case No. 174.

*Decided May 6, 1913.*

Proceeding on motion of Commission to ascertain various elements entering into the value of the property of respondent. Findings made as to facts but not as to the elusive question of the value of the property, irrespective of the purposes for which the value is ascertained. Respondent objected to the estimate of the Commission's engineering department as to (1) the reproduction value and present value of right of way and station grounds; (2) the reproduction and present value of grading; (3) the reproduction and present value of floating equipment. Said objections disposed of after discussion. Consideration given to (1) organization, construction and operation; (2) stocks and bonds; (3) revenues and expenses; (4) original cost; (5) reproduction value; (6) present value.

Findings of fact: (1) that the cost of reproducing, in the condition in which it was acquired, the items entering into the operative physical property of the respondent as of June 30, 1912, is not in excess of the sum of \$453,721.55; (2) that the present value of the physical elements of the operative property of respondent, including engineering, law expenses and interest during construction, and an item of 5 per cent for contingencies, as of June 30, 1912, is the sum of \$315,029.96.

*Held*, With respect to original cost, the Commission's engineering department having estimated such cost to have been \$630,793.22, including an item of \$247,736.54 for "other expenditures," and it appearing that this item, doubtlessly, includes at least \$200,000 of capital stock issued as a capital stock dividend and not representing outlay of any cash whatsoever, that it is, consequently, impossible to find the original cost of respondent's property as a whole.

Opinion and order in Case No. 206 referred to for general procedure in valuation cases and for definitions of terms used.

*Walter D. Bliss and George T. Klink*, for Lake Tahoe Railway and Transportation Company.

## REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

## OPINION AND FINDINGS.

This proceeding was brought on the Railroad Commission's initiative for the purpose of ascertaining various elements entering into the value of the property of the Lake Tahoe Railway and Transportation Company. For the general procedure in these so-called railroad valuation cases and for a general description of the nature of the work performed by this Commission's engineering department in connection therewith, reference is hereby made to this Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company. As in that

case, so here also I shall make findings of fact, and shall not make a finding on the elusive question of the value of the property, irrespective of the purposes for which the value is ascertained. I think it well at the outset to define certain terms which will be used herein.

The term "original cost," as used in this opinion, means the actual expenditures, in cash or its equivalent, by the railway company for the physical elements entering into its operative property, as of June 30, 1912, to which are added overhead expenditures for engineering, law, interest and commissions and similar items.

The term "reproduction value," as used in this opinion, means the estimated cost in cash of acquiring the operative right of way and other real estate and of reproducing in the condition in which it was acquired and the other operative physical property of the railway company as of June 30, 1912, to which are added overhead expenditures for engineering, law, interest, and commissions and similar items.

The term "present value," as used in this opinion, means the "reproduction value" less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, and inadequacy. This might properly be called "depreciated reproduction value," and does not mean the ultimate fact of present value as that term is ordinarily used.

As directed by the Commission, the railway company filed with the Commission its inventory of property, together with a statement of the original cost, reproduction value and present value thereof. The final summary sheet of this report is attached to this opinion and marked "Exhibit A." This final summary sheet is fragmentary, contains no statement whatever concerning important items, such as the reproduction value and present value of grading, overhead expenses, and other expenditures, and for that reason is of but little value in connection with this inquiry. Nevertheless, the sheet is attached for such value as it may have. It should be noted, however, that on the individual sheets of the inventory and appraisal forms the railway company gave the details of certain items which are not entered in its final summary sheet. Some of these items were of assistance to this Commission's engineering department in preparing its estimate.

The Commission's engineering department also prepared a report concerning the original book cost, the reproduction value and the present value of the physical elements of the operative property of the railroad as of June 30, 1912. The final summary sheet of this report is attached hereto and marked "Exhibit B."

At the hearing the railway company accepted in general the estimate of this Commission's engineering department, but made objections to the following items therein contained:

(1) The reproduction value and present value of right of way and station grounds.

(2) The reproduction and present value of grading.

(3) The reproduction and present value of floating equipment.

These objections will hereafter be considered in detail.

In connection with this inquiry I shall consider the following matters:

1. Organization, construction, and operation.
2. Stocks and bonds.
3. Revenues and expenses.
4. Original cost.
5. Reproduction value.
6. Present value.

1. *Organization, construction, and operation.*

The Lake Tahoe Railway and Transportation Company was incorporated in December, 1898, under the laws of the State of California, to construct a line of railroad from Truckee, Nevada County, to Tahoe City, Placer County, a distance of 15 miles, more or less; also to own and operate freight and passenger boats on Lake Tahoe; and to build, maintain, and operate, among other things, hotels and appurtenances necessary thereto.

Construction on the railway began in April, 1899, and was completed in 1900. The railroad bought the property of the Lake Tahoe Transportation Company, consisting principally of vessels navigating Lake Tahoe, wharves and machine shops, and also the rails and rolling stock of the Carson-Tahoe Flume and Lumber Company, which was operating a logging railroad. Operation commenced in 1900 or 1901.

The railroad's track mileage consists of 14.70 miles of main line and 4.46 miles of siding, spurs, and other tracks, making a total mileage of 19.16 miles. The gauge of the railroad is 3 feet. The company also owns certain boats and steamers which do a freight and passenger business on Lake Tahoe, between Tahoe City and points on the lake in California and Nevada. The company also owns and operates extensive hotel and tavern facilities at Tahoe City, and owns in connection therewith considerable valuable real estate in addition to its operative property.

The railroad is operated principally for tourist travel during the summer time. Because of this fact, and of the severity of the winters in this altitude, the railroad is operated only during an average period of five months during the spring and summer. During the other portions of the year the steamship service is reduced to a weekly schedule.

2. *Stocks and bonds.*

The railroad's authorized capital stock is 5,000 shares of common stock of a par value of \$100 each, making a total par value of \$500,000.

The entire authorized capital stock has been issued. One thousand shares of this stock, together with bonds, as hereinafter indicated, were exchanged for the property of the Lake Tahoe Transportation Company, including boats, wharves, marine ways, and certain other property at Tahoe City. We have no means of ascertaining the value of this property at the time it was acquired by the railway company. Another 1,000 shares of capital stock were sold for cash and the proceeds thereof used to purchase the wharves and equipment of the Carson-Tahoe Flume and Lumber Company, and also to begin the construction of the railroad. We have no record of the amount of cash derived from the sale of this stock or of the value of the property received therefor. The remaining 3,000 shares of stock appear to have been issued in December, 1902, as a stock dividend. In its annual report to this Commission for the year ending June 30, 1912, the railway company reports that it is unable to state the amount of cash or the value of the property secured by the issue of its capital stock.

The railroad company has an authorized bonded indebtedness of first mortgage 5 per cent bonds, dated October 1, 1901, and maturing October 1, 1931, interest payable semiannually, totaling the face value of \$500,000. Of the bonds so authorized all have been issued, but the company reports that bonds of this issue of the par value of \$31,000 are now held by it in sinking and other funds. Bonds of this issue of the face value of \$100,000 were issued, together with an equivalent par value of stock, as hereinbefore specified, in exchange for the property of the Lake Tahoe Transportation Company. The remaining bonds have been sold from time to time at par and less, the minimum amount realized being 93 per cent of the face value, and the proceeds have been used in the completion of the railroad and in the construction and equipment of the hotel and other buildings at Tahoe City, and in the purchase of land for the company's resort at Tahoe City. In its annual report to this Commission for the year ending June 30, 1912, the railway company reports that it realized from the sale of its entire issue of bonds \$489,650 in cash. It should be remembered, however, in this connection, that bonds of the face value of \$100,000 were issued for property of the Lake Tahoe Transportation Company and that the correctness of the railway company's report as to the amount of cash realized from the issue of its bonds depends in part on the value of the property so acquired from the Lake Tahoe Transportation Company. We have no report as to the actual value of the property so acquired. It should be noted that the item of stocks and bonds covers both operative and non-operative property of the railway company, and that consequently, unless some segregation is made, the item has very little bearing on the question which is the subject of this inquiry.



### 3. Revenues and expenses.

The earnings of the railway company for the year ending June 30, 1912, on both operative and non-operative property, as reported to this Commission, were as follows:

| Class of property. | Gross earnings. | Expenses.    | Net earnings. |
|--------------------|-----------------|--------------|---------------|
| Railroad -----     | \$43,569 46     | \$35,180 45  | \$8,389 01    |
| Steamer -----      | 39,123 01       | 24,359 69    | 14,763 32     |
| Hotel -----        | 131,967 98      | 111,949 52   | 20,018 46     |
| Stable -----       | 7,219 93        | 6,830 76     | 389 17        |
| Cook house -----   | 1,600 50        | 1,694 76     | *94 26        |
| Small boats -----  | 4,216 15        | 3,901 42     | 314 73        |
| Totals -----       | \$227,697 03    | \$183,916 60 | \$43,780 43   |

\*This item is a credit.

Deductions from income for the year ending June 30, 1912, were as follows:

|  |              |
|--|--------------|
| Taxes -----  | \$3,265 47   |
| Interest on bonded debt -----  | 22,879 79    |
| Other interest -----   | 2,908 35     |
| Additions to sinking fund -----  | 6,000 00     |
| Discount on bonds sold -----   | 3,350 00     |
| Miscellaneous adjustments -----  | 1,677 13     |
|  | \$40,080 74  |
| Subtracting this amount from net earnings leaves a total surplus for the year of ----- | \$3,699 69   |
| Surplus on hand June 30, 1911 -----  | 173,728 39   |
| Total surplus on hand June 30, 1912 -----  | \$177,428 08 |

Above figures were based on a tabulated statement enclosed with a letter of September 3, 1912, from Mr. D. L. Bliss. However, the annual report made to the Railroad Commission under date of September 24, 1912, showed operating expenses in connection with rail operations to be \$36,180.45, instead of \$35,180.45; expenses in connection with outside operations at \$149,736.15 instead of \$148,736.15; total net revenue in consequence of these two items, \$41,780.43 instead of \$43,780.43. This results in a net corporate income of \$6,713.82 for the year, which, after being reduced by the profit and loss accounts by \$3,350 of the above table and by \$1,664.13 for a revised miscellaneous adjustments, leaves a net profit from operation of \$1,699.69 instead of \$3,699.69.

### 4. Original cost.

By referring to Exhibit "A" it will be noted that the fragmentary original cost there given by the railway company totaled \$375,074.99. By referring to Exhibit "B" it will be noted that this Commission's engineering department's estimate of original cost, assuming correctness of company's books, was \$630,793.22. Referring to the railway company's estimate it should be noted that a large number of important items are omitted, so that the estimate as a total is of very little value.

Referring now to this Commission's engineering department's estimate, it should be noted that the total of \$630,793.22 includes an item of \$247,736.54 for "other expenditures." It developed at the hearing that this item doubtlessly includes at least \$200,000 of capital stock issued as a capital stock dividend and not representing outlay of any cash whatsoever. It is consequently impossible in this case to find the original cost of the property as a whole, and I shall make no finding thereon.

5. *Reproduction value.*

By referring to the railway company's final summary sheet, which is attached hereto as Exhibit "A," it will be noted that the company estimates the reproduction value at \$378,801.53. In this total, however, no item is included for grading, track fastenings and other material, floating equipment or overhead expenses. Consequently, the total so given can have but little value. By referring to Exhibit "B" it will be observed that this Commission's engineering department estimated a reproduction value totaling \$453,721.55. The railway company, while accepting most of the items in this total, objected particularly to the following three items:

1. Right of way and station grounds.
2. Grading.
3. Floating equipment.

The railway company claimed that the reproduction value of its right of way from Truckee to Tahoe City should be estimated by applying front foot prices. It appears that the entire canyon of the Truckee River, from Truckee to Tahoe City, has been subdivided into lots, having an area of about two acres each, and that efforts have been made by the owners to dispose of these lots. Of a total of 610 lots, 59 only have been sold. No lots at all were sold during this last year. The lots so sold represent the best building sites and were sold at from 25 per cent to 50 per cent off the listed market value. From Truckee south, along at least one half the extent of the company's right of way, only three lots have been sold. The railway company estimates a reproduction value of its right of way amounting to \$54,919.30, being on a basis of about \$655 per acre. This value is ascertained by taking a front foot value of \$5 per foot throughout the entire extent of the right of way.

The right of way was acquired by the railway company from the Truckee Lumber Company by deed dated March 6, 1909, following upon an agreement dated December 13, 1898. The agreement provided, in effect, that the railway company should construct a 3-foot narrow-gauge railroad between Truckee and Lake Tahoe by May 15, 1900, together with three spur tracks and any extensions for which the lumber company might furnish ties and labor. The railway company agreed that

it would transport logs for the lumber company between Squaw Creek and Lake Tahoe, including towing in Lake Tahoe, for \$1.50 per thousand feet, board measure, and wood between the same points for 52½ cents per cord. The railway company agreed that it would buy its ties from the lumber company for \$9 per thousand feet, board measure. The lumber company, on its part, agreed that the railway company should have a perpetual right of way over all lots owned by the lumber company between Truckee and Lake Tahoe, and also through the lumber company's yard at Truckee, and that it would give to the railway company the hauling of all its logs and wood at the rate stated, in quantities not less than five million feet, board measure, per year, beginning in the year 1900.

On March 6, 1909, in pursuance of this agreement, the lumber company deeded to the railway company the latter's right of way without additional consideration. It thus appears that the railway company's right of way was acquired by it without any cash payment whatsoever for the land. The item of \$513.90 reported by the railway company under the head of original cost for right of way and station grounds includes an item of \$87.50 which the railway company admits should be charged to operating expense. Consequently, the corrected item is \$426.40. No portion of this amount was expended in payment for land. The item represents an expenditure of some \$400 incurred in tearing down a building belonging to the Southern Pacific Company and obstructing the located alignment and a sum of \$26.40 for incidental expenses.

This Commission's engineering department estimated the reproduction value of right of way and station grounds at \$17,422.50. This item includes not merely the right of way between Truckee and Tahoe, but also a portion of the public commons used by the railway company at Tahoe City and other property used for station ground purposes at Truckee and Tahoe City. In seeking to ascertain the present market value of the right of way, this Commission's engineering department made exhaustive inquiries from persons familiar with the values of property in this vicinity. The estimates of these persons varied from \$10 per acre to \$3 per front foot. After giving careful consideration to the entire matter, the engineering department estimated the present market value of the right of way at \$25 per acre. Because of the damage which might be caused by segregation of the right of way from larger parcels of land and of an increased value due to the fact that the railway owns a continuous strip of right of way, the department added 50 per cent in most cases to the present market value to ascertain what it believed would be a fair sum to represent the cost of reproducing the property as of June 30, 1912.

The mere fact that acreage property is subdivided does not in itself necessarily increase the value thereof. Nor does the fact that property is held at a certain figure indicate its true value. In the present case it appears that none of these lots have been sold during the last year, and that those which were theretofore sold were largely the best sites, and that they were sold at large percentages off the listed price. I am convinced that most of these lots will not be sold for many years to come for building sites, but that they will remain in their present condition as rough mountain land, worth certainly not to exceed \$8 or \$10 per acre for grazing purposes. I am convinced that this Commission's engineering department's estimate in this respect is a fair one and shall be guided by it.

Referring now to the reproduction cost estimated for grading, the railway company claimed that the original cost had been \$45,204.68, and they urged that this amount be taken to represent the reproduction value. The estimate of this Commission's engineering department was \$22,889.77. This latter estimate was secured by taking the quantities for clearing, grubbing, earth excavation, loose rock excavation, and solid rock excavation, overhaul and riprap reported by the railway company and applying thereto such unit prices as in the judgment of the engineering department were fair prices for this particular railroad. The railway company claimed that an unusually large number of boulders, both on the surface and imbedded along the proposed right of way, had been found in building the railroad, and that allowance should be made by reason of this fact in estimating the cost of reproducing the grading. The railway company was unable to furnish definite information with reference to the amount of boulders so found or as to the increased difficulty resulting from their presence. The representatives of the railway company simply testified that they had heard that such boulders had been encountered and that by reason thereof the work had been rendered more difficult.

The Commission's engineering department allowed the following unit prices:

|  |         |
|--|---------|
| Clearing, per acre.....                                | \$25 00 |
| Grubbing, per acre.....                                | 25 00   |
| Earth excavation, per cubic yard.....                  | 25½     |
| Loose rock excavation, per cubic yard.....             | 53      |
| Solid rock excavation, per cubic yard.....             | 96      |
| Overhaul per 100 feet, with free haul of 500 feet..... | 01½     |
| Riprap, per cubic yard.....                            | 1 50    |

In using these unit prices this Commission's engineering department intended the estimate of \$25 per acre for clearing to cover such increased difficulties as arose from the presence of surface boulders. The department intended the item of 25½ cents per cubic yard for earth excavation to include such difficulties, if any, as arose from the presence of subsurface boulders, bearing in mind that the classification quantities

contemplate that all boulders containing over three cubic feet are to be considered as solid rock at 96 cents per cubic yard, and all boulders containing over one cubic foot as loose rock at 53 cents per cubic yard.

In arriving at its unit prices used in this case, the engineering department availed itself of the prices for which a large number of contracts in country of a general character similar to that here involved were let and the work actually performed. Referring particularly to earth excavation, it appears that large amounts of earth excavation in country analogous to that here involved have been moved for the Southern Pacific Company and the Western Pacific Railway Company for the sum of 17 cents per cubic yard, and that varying other prices have also been paid, running up to a maximum of between 26 cents and 30 cents for work on the line of the Northwestern Pacific north of Willits, in difficult clay soil. It appears that between Cadiz and Parker, in San Bernardino County, over territory which, while comparatively flat, was nevertheless thickly covered with boulders, the Atchison, Topeka and Santa Fe Railway Company paid \$10 per acre for clearing and 18½ cents per cubic yard for earth excavation. In addition to these prices the Santa Fe transported free contractors, men, and materials, and incurred certain other expenditures.

In considering this matter it should be borne in mind that the original cost of doing this work was increased by the fact that the work was done in two seasons, with an intervening winter period. The Commission's engineering department's estimate of reproduction value, which estimate is accepted in these findings, is based on the theory that the work may be completed in one job during one season.

I am convinced that, on this assumption, the amounts allowed in the estimate of this Commission's engineering department are fair and liberal, and shall assume them in these findings to be correct.

The railway company contends that this Commission's estimate for reproduction value for floating equipment, viz. \$126,000, is too low. The railway company submitted the figure of \$131,735.39, which represents the company's book charge for floating equipment and certain other items in addition thereto, including wharves, a breakwater at Tahoe, marine ways, grill room on the old wharf, and certain other items, making a total for these added items of approximately \$5,700. This Commission's engineering department, in estimating the reproduction value of floating equipment, credited the railway company with its entire original book cost of floating equipment proper, amounting to \$126,000. In the absence of an affirmative explanation, it is not to be assumed that the cost of reproducing property of a railroad company is in excess of what the company paid therefor. In this case no affirmative facts were presented other than the statement that the Union Iron Works lost an indefinite amount of money on one of the vessels involved,

to show that it would cost more than as of June 30, 1912, to reproduce this equipment than the amount paid therefor by the railway company. While the general statement was made that the cost of labor at the present time is in excess of its cost when these boats were constructed, it must also be borne in mind that the cost of certain materials has decreased, and also that the facilities for economic output have been materially increased. For instance, a steam locomotive costs at the present time practically the same as the same locomotive would have cost twenty years ago. In the absence of affirmative proof establishing the alleged increased cost in this case, I shall assume that the cost to reproduce this floating equipment is not in excess of the original cost thereof.

This disposes of the railway company's objections to the report of this Commission's engineering department. It should be clearly understood that this Commission regards the reports of its engineering department simply as estimates presented by employees who are skilled in their work and who have no interest in the subject-matter one way or the other, but not as necessarily conclusive on the Commission. The Commission in each case hears the testimony of the railway company and then reaches a conclusion as best it may, bearing in mind both the testimony of the railway company and such estimates as may have been presented by its engineering department. In this case I find that there is no valid reason for increasing the estimate of the engineering department.

I find as a fact, from the evidence in this case, that the cost of reproducing in the condition in which it was acquired, the items entering into the operative physical property of the Lake Tahoe Railway and Transportation Company as of June 30, 1912, is not in excess of the sum of \$453,721.55.

#### 6. *Present value.*

This Commission's engineering department reported the present value, as hereinbefore defined, to be the sum of \$315,029.96. The railway company's objections, in so far as they applied to present value, have already been discussed under the head of reproduction value. As usual in cases of this kind, the department gave the same estimate of present value for right of way, station grounds, and real estate as it gave as an estimate for the present railroad value, under the head of reproduction value. It should also be noted that the department regularly allows the same amount for overhead expenses under the head of present value as it allows under the head of reproduction value. In other words, the department does not subtract anything for depreciation on overhead expenses.

In ascertaining the depreciated reproduction value of such physical items as are subject to depreciation, the engineering department, as

usual in these cases, ascertained as far as possible the age of the particular item and applied such percentages of depreciation as its investigations covering this State have shown to it to be proper.

With reference to grading, however, it should be noted that the engineering department has appreciated the item to the extent of 10 per cent in excess of the estimated reproduction value thereof, except as to clearing, grubbing, and riprap, which are estimated at 100 per cent. The additional 10 per cent takes account of the solidification and adaptation of roadbed which is not present under conditions of reproduction new. With reference to solid rock, an appreciation of 10 per cent has been allowed, although the Commission is making further investigations in appreciation of solid rock and may not hereafter allow more than 5 per cent.

I find on the evidence in this case that the present value, as that term has heretofore been defined, of the physical elements of the operative property of the Lake Tahoe Railway and Transportation Company, including engineering, law expenses, and interest during construction, and an item of 5 per cent for contingencies, as of June 30, 1912, is the sum of three hundred and fifteen thousand twenty-nine and 96/100 dollars (\$315,029.96).

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of May, 1913.

## EXHIBIT "A."

Name of owner, Lake Tahoe Railway and Transportation Company; operating company, Lake Tahoe Railway and Transportation Company, from Tahoe to Truckee, miles, main line track, 14.7; miles, yard tracks, etc., 4.8; total, 19.5.

Valuation as of June 30, 1912.

| Class No. | Form No. | I. C. C. Act No. | Classes.  | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|------------------|---|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                | Right of way and station grounds.....                                 | \$513 90       | \$54,919 30         | -----           | \$59,113 26    |
| 2         | 2        | 3                | Real estate .....   | 8,474 00       | 52,804 20           | -----           | 52,804 20      |
| 3         | 3        | 4                | Grading .....   | 45,204 68      |                     | -----           |                |
| 4         | 4        | 5                | Tunnels .....   |                |                     | -----           |                |
| 5         | 5        | 6                | Steel bridges and trusses.....  |                |                     | -----           |                |
| 6         | 6        | 6                | Pile and frame trestles.....  | 11,988 34      | 17,357 43           | -----           | 15,522 75      |
| 7         | 7        | 6                | Culverts .....  |                | 1,514 19            | -----           | 1,362 89       |
| 8         | 8        | 7                | Ties .....  | 11,243 98      | 18,416 76           | -----           | 14,512 87      |
| 9         | 9        | 8                | Rails .....   | 37,343 20      | 46,760 00           | -----           | 35,070 00      |
| 10        | 10       | 9                | Frogs and switches.....   | 843 02         | 1,220 00            | -----           | 976 00         |
| 11        | 11       | 10               | Track fastenings and other material.....                              | 1,532 75       |                     | -----           |                |
| 12        | 12       | 11               | Ballast .....   | 5,116 94       | 6,140 32            | -----           | 6,140 32       |
| 13        | 13       | 12               | Tracklaying and surfacing.....  | 14,374 93      | 17,249 91           | -----           | 17,249 91      |
| 14        | 14       | 13               | Roadway tools .....   |                | 197 10              | -----           | 127 55         |
| 15        | 15       | 14               | Fencing right of way .....  |                |                     | -----           |                |
| 16        | 16       | 15               | Crossings and signs.....  | 107 89         | 120 47              | -----           | 116 53         |
| 17        | 17       | 16               | Interlocking plants .....   |                |                     | -----           |                |
| 18        | 18       | 16               | Signal apparatus .....  |                |                     | -----           |                |
| 19        | 19       | 17               | Telegraph and telephone lines.....                                    |                |                     | -----           |                |
| 20        | 20       | 18               | Station buildings and fixtures.....                                   | 15,008 42      | 21,011 92           | -----           | 18,910 93      |
| 21        | 21       | 18               | Platforms, walks, paving and curb.....                                |                |                     | -----           |                |
| 22        | 22       | 19               | General office buildings and fixtures.....                            |                |                     | -----           |                |
| 23        | 23       | 20               | Shop buildings and engine houses.....                                 | 14,213 70      | 19,899 18           | -----           | 17,909 27      |
| 24        | 24       | 20               | Transfer and turntables, cinder pits, etc.....                        |                |                     | -----           |                |
| 25        | 25       | 20               | Miscellaneous shop buildings and structures.....                      |                |                     | -----           |                |
| 26        | 26       | 21               | Shop machinery and tools.....   | 17,831 23      | 30,000 00           | -----           | 24,000 00      |
| 27        | 27       | 22               | Water stations .....  | 1,418 73       | 1,418 73            | -----           | 1,276 86       |
| 28        | 28       | 23               | Fuel stations .....   |                |                     | -----           |                |
| 29        | 29       | 24               | Grain elevators .....   |                |                     | -----           |                |
| 30        | 30       | 25               | Storage warehouses .....  |                |                     | -----           |                |
| 31        | 31       | 26               | Dock and wharf property.....  | 9,427 52       | 11,313 02           | -----           | 10,181 72      |
| 32        | 32       | 27               | Electric light plants .....   |                |                     | -----           |                |
| 33        | 33       | 28               | Electric power plants.....  |                |                     | -----           |                |
| 34        | 34       | 29               | Electric power transmission.....                                      |                |                     | -----           |                |
| 35        | 35       | 30               | Gas producing plants.....   |                |                     | -----           |                |
| 36        | 36       | 31               | Miscellaneous structures .....  |                |                     | -----           |                |
| 37        | 37       | 1                | Total classes 1 to 36, inclusive.....                                 | \$195,043 23   | \$300,351 53        | -----           | \$275,275 06   |
| 38        | 38       | 32               | Engineering, .. per cent, 1 to 36, inclusive.....                     |                |                     | -----           |                |
| 39        | 39       | 33               | Transportation of men and material.....                               |                |                     | -----           |                |
| 40        | 40       | 34               | Rent of equipment.....  |                | 11,500 00           | -----           | 5,750 00       |
| 41        | 41       | 35               | Repairs of equipment.....   |                |                     | -----           |                |
| 42        | 42       | 35 1/2           | Earning and operating expenses during construction .....              |                |                     | -----           |                |
| 43        | 43       | 36               | Injuries to persons.....  |                |                     | -----           |                |
| 44        | 44       | 37               | Cost of road purchased.....   |                |                     | -----           |                |
| 45        | 45       | 38               | Total classes 1 to 43, inclusive.....                                 | \$195,043 23   | \$311,851 53        | -----           | \$281,025 06   |
| 46        | 46       | 39               | Steam locomotives .....   | 16,769 02      | 14,000 00           | -----           | 8,000 00       |
| 47        | 47       | 40               | Electric locomotives .....  |                |                     | -----           |                |
| 48        | 48       | 41               | Passenger train cars.....   | 8,533 09       | 24,200 00           | -----           | 13,280 00      |
| 49        | 49       | 42               | Freight train cars.....   | 22,351 66      | 27,750 00           | -----           | 17,700 00      |
| 50        | 50       | 43               | Work equipment .....  | 622 60         | 1,000 00            | -----           | 700 00         |
| 51        | 51       | 44               | Floating equipment .....  | 131,735 39     |                     | -----           | 118,561 86     |
| 52        | 52       | 45               | Total classes 1 to 49, inclusive.....                                 | \$375,074 99   | \$378,801 53        | -----           | \$439,266 92   |
| 53        | 53       | 46               | Law expenses, .. per cent, classes 1 to 36, inclusive .....           |                |                     | -----           |                |
| 54        | 54       | 47               | Stationery and printing.....  |                |                     | -----           |                |
| 55        | 55       | 48               | Insurance .....   |                |                     | -----           |                |
| 56        | 56       | 49               | Taxes .....   |                |                     | -----           |                |
| 57        | 57       | 50               | Total classes 1 to 53, inclusive.....                                 |                |                     | -----           |                |
| 58        | 58       | 51               | Interest and commission, .. per cent, classes 1 to 53, inclusive..... |                |                     | -----           |                |
| 59        | 59       | 52               | Other expenditures .....  |                |                     | -----           |                |
| 60        | 60       | 53               | Contingencies, .. per cent, classes 1 to 53, inclusive .....          |                |                     | -----           |                |
| 61        | 61       | 54               | Stores and supplies on hand for use in California .....               |                |                     | -----           |                |
| 62        | 62       | 55               | Grand total .....   |                |                     | -----           |                |
| 63        | 63       | 56               | Average per mile for main line track.....                             |                |                     | -----           |                |



## EXHIBIT "B."

Name of owner, Lake Tahoe Railway and Transportation Company; operating company, same; division, entire line; from Tahoe to Truckee, miles, main line track, 11.70; miles, yard tracks, etc., 4.17; total, 19.16 miles. Valuation as of June 30, 1912. R. A. Thompson and Paul Thelen, field inspectors and office compilers; date compiled, September 20, 1912.

| Class No. | Form No. | Account No. | Classes.   | Original book cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|-------------|--|---------------------|---------------------|-----------------|----------------|
| 1         | 1        | 2           | Right of way and station grounds.....                                | \$1,456 41          | \$17,422 50         | 100             | \$17,422 50    |
| 2         | 2        | 3           | Real estate .....  | 3,350 00            | 2,440 00            | 100             | 2,440 00       |
| 3         | 3        | 4           | Grading .....  | 45,204 68           | 22,889 77           | 109             | 24,850 24      |
| 4         | 4        | 5           | Tunnels .....  |                     |                     |                 |                |
| 5         | 5        | 6           | Steel bridges and trusses.....                                       |                     |                     |                 |                |
| 6         | 6        | 6           | Pile and frame trestles.....   | 11,988 34           | 10,564 79           | 80              | 8,422 99       |
| 7         | 7        | 6           | Culverts .....   |                     | 1,309 98            | 50              | 654 99         |
| 8         | 8        | 7           | Ties .....   | 11,243 98           | 17,884 22           | 60              | 10,730 59      |
| 9         | 9        | 8           | Rails .....  | 37,243 20           | 44,422 00           | 50              | 22,211 00      |
| 10        | 10       | 9           | Frogs and switches.....  | 843 02              | 1,170 00            | 50              | 585 00         |
| 11        | 11       | 10          | Track fastenings and other material.....                             | 1,962 75            | 4,891 24            | 50              | 2,445 62       |
| 12        | 12       | 11          | Ballast .....  | 5,116 94            | 5,839 90            | 80              | 4,666 32       |
| 13        | 13       | 12          | Tracklaying and surfacing.....                                       | 14,372 93           | 16,168 00           | 55              | 8,830 88       |
| 14        | 14       | 13          | Roadway tools .....  | 404 10              | 404 10              | 50              | 202 05         |
| 15        | 15       | 14          | Fencing right of way .....   |                     |                     |                 |                |
| 16        | 16       | 15          | Crossings and signs.....   | 107 89              | 152 00              | 60              | 91 20          |
| 17        | 17       | 16          | Interlocking plants .....  |                     |                     |                 |                |
| 18        | 18       | 16          | Signal apparatus .....   |                     |                     |                 |                |
| 19        | 19       | 17          | Telegraph and telephone lines.....                                   |                     |                     |                 |                |
| 20        | 20       | 18          | Station buildings and fixtures.....                                  |                     |                     |                 |                |
| 21        | 21       | 18          | Platforms, walks, paving and curb.....                               |                     |                     |                 |                |
| 22        | 22       | 19          | General office buildings and fixtures.....                           | 4,000 00            | 4,744 00            | 80              | 3,795 20       |
| 23        | 23       | 20          | Shop buildings and engine houses.....                                | 14,213 70           | 11,227 50           | 62              | 6,994 55       |
| 24        | 24       | 20          | Transfer and turntables, cinder pits, etc.....                       |                     | 500 00              | 50              | 250 00         |
| 25        | 25       | 20          | Miscellaneous shop buildings and structures.....                     |                     |                     |                 |                |
| 26        | 26       | 21          | Shop machinery and tools.....  | 17,427 13           | 17,061 00           | 65              | 11,089 65      |
| 27        | 27       | 22          | Water stations .....   | 1,418 73            | 1,400 00            | 61              | 850 00         |
| 28        | 28       | 23          | Fuel stations .....  |                     |                     |                 |                |
| 29        | 29       | 24          | Grain elevators .....  |                     |                     |                 |                |
| 30        | 30       | 25          | Storage warehouses .....   |                     |                     |                 |                |
| 31        | 31       | 26          | Dock and wharf property.....   | 9,427 52            | 9,821 35            | 50              | 4,910 67       |
| 32        | 32       | 27          | Electric light plants.....   |                     |                     |                 |                |
| 33        | 33       | 28          | Electric power plants.....   |                     |                     |                 |                |
| 34        | 34       | 29          | Electric power transmission.....                                     |                     |                     |                 |                |
| 35        | 35       | 30          | Gas producing plants.....  |                     |                     |                 |                |
| 36        | 36       | 31          | Miscellaneous structures .....                                       | 11,008 42           | 12,979 40           | 64              | 8,299 81       |
| 37        | ---      | 1           | Total classes 1 to 36, inclusive.....                                | \$190,861 74        | \$363,222 85        | 69              | \$139,743 26   |
| 38        | 37       | 32          | Engineering, 5 per cent, 1 to 36, inclusive.....                     |                     | 10,161 14           | 100             | 10,161 14      |
| 39        | 38       | 33          | Transportation of men and material.....                              |                     |                     |                 |                |
| 40        | 38       | 34          | Rent of equipment .....  |                     |                     |                 |                |
| 41        | ---      | 35          | Repairs of equipment .....   |                     |                     |                 |                |
| 42        | ---      | 35          | Earning and operating expenses during construction.....              |                     |                     |                 |                |
| 43        | ---      | 35          | Injuries to persons.....   |                     |                     |                 |                |
| 44        | ---      | 36          | Cost of road purchased.....  |                     |                     |                 |                |
| 44        | 39       | 37          | Total classes 1 to 43, inclusive.....                                | \$190,861 74        | \$213,383 99        | 70              | \$149,904 40   |
| 45        | ---      | 38          | Steam locomotives .....  | 16,769 62           | 20,000 00           | 40              | 8,000 00       |
| 46        | 40       | 39          | Electric locomotives .....   |                     |                     |                 |                |
| 47        | 41       | 40          | Passenger train cars.....  | 8,533 09            | 13,600 00           | 40              | 5,440 00       |
| 48        | 42       | 41          | Freight train cars.....  | 22,351 66           | 28,260 00           | 36              | 10,140 00      |
| 49        | 43       | 42          | Work equipment .....   | 622 60              | 3,600 00            | 38              | 1,375 00       |
| 50        | ---      | 43          | Floating equipment .....   | 131,735 39          | 126,000 00          | 72              | 91,233 00      |
| 50        | ---      | 43          | Total classes 1 to 49, inclusive.....                                | \$370,573 50        | \$101,783 99        | 66              | \$266,092 40   |
| 51        | 44       | 41          | Law expenses, 1 per cent, classes 1 to 49, inclusive.....            |                     | 4,047 84            | 100             | 4,047 84       |
| 52        | 44       | 45          | Stationery and printing.....   |                     |                     |                 |                |
| 53        | 45       | 46          | Insurance .....  |                     |                     |                 |                |
| 54        | ---      | 47          | Taxes .....  |                     |                     |                 |                |
| 54        | ---      | 47          | Total classes 1 to 53, inclusive.....                                | \$370,573 50        | \$108,831 83        | 66              | \$270,140 24   |
| 55        | 45       | 48          | Interest and commission, 5 per cent, classes 1 to 53, inclusive..... |                     | 12,264 96           | 100             | 12,264 96      |
| 56        | ---      | 49          | Other expenditures .....   | 247,736 54          |                     |                 |                |
| 57        | ---      | 46          | Contingencies, 5 per cent, classes 1 to 53, inclusive.....           |                     | 20,441 59           | 100             | 20,441 59      |
| 57        | 46       | ---         | Stores and supplies on hand for use in California.....               | 12,183 18           | 12,183 18           | 100             | 12,183 18      |
| 57        | ---      | 46          | Grand total .....  | \$630,793 22        | \$153,721 55        | 70              | \$315,029 96   |
| 57        | ---      | 46          | Average per mile for main line track.....                            | 42,911 10           | 30,865 41           |                 | 21,430 61      |

## DECISION No. 641.

IN THE MATTER OF THE APPLICATION OF THE UNION HOME TELEPHONE AND TELEGRAPH CORPORATION FOR AN ORDER AUTHORIZING THE USE OF A PART OF THE CORPORATION'S BONDS FOR PURPOSE OF REPAYING A LOAN OF BONDS TO APPLICANT BY THE CONTRACTING AND ENGINEERING COMPANY.

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Application No. 520.

*Decided May 6, 1913.*

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Application granted upon the grounds, first, that, under the agreement pursuant to which applicant borrowed the bonds, an action probably would lie in the courts to recover the amount of the bonds; and, second, the value of the bonds which have been sold by applicant are not impaired by granting the application, the financial condition of applicant remaining substantially the same; and upon the condition that applicant shall procure from the trustee an authorization to the proposed transaction.

*George B. Ellis*, for Applicant.

REPORT OF THE COMMISSION.

*LOVELAND, Commissioner.*

It appears from the application and testimony in this matter that applicant, Union Home Telephone and Telegraph Corporation, a corporation duly incorporated under the laws of the State of California, with its principal place of business at Los Angeles, California, is, and has been for several years past, engaged in owning, managing and operating telephone companies in several different towns in southern California.

On November 1, 1909, applicant authorized a debenture bond trust agreement between applicant and the Title Insurance and Trust Company of Los Angeles, as trustee. Under the terms of said debenture bond trust agreement, the Union Home Telephone and Telegraph Corporation agreed to deposit with said Title Insurance and Trust Company, trustee, \$500,000 par value of said first mortgage gold bonds as security for an issue of \$200,000 par value debenture bonds. Applicant, not having \$500,000 of its first mortgage bonds which had been certified, in its treasury, borrowed of the Contracting and Engineering Company, which company was closely affiliated with applicant and one of its heaviest bond holders, 161 bonds which had been issued by applicant of the par value of \$161,000. By adding said \$161,000 par value of bonds so borrowed to what applicant had in its treasury, it was enabled to deposit, and did deposit, with said Title Insurance and Trust Company, trustee, the \$500,000 par value of its first mortgage bonds agreed upon and in return therefor received the \$200,000 par value debenture

bonds for which the \$500,000 par value of bonds were deposited as security. At the time applicant borrowed the \$161,000 par value of bonds from the Contracting and Engineering Company, it agreed to return them upon demand, and such demand having been made and applicant now having in its treasury more than sufficient bonds to repay the Contracting and Engineering Company, it asks permission of this Commission to cancel its obligation by returning to the Contracting and Engineering Company bonds to the value of \$161,000.

After careful consideration, while the Commission has not taken up and investigated the financial condition of applicant, it does not feel that it is called upon to do so in passing upon this application, for the reasons which move the Commission to grant the application, which are two, namely: first, it is probable that, under the agreement under which applicant borrowed the bonds from the Contracting and Engineering Company and agreed to return them, an action would lie in the courts to recover the amount of the bonds; and, second, the value of the bonds which have been sold by applicant are not impaired by granting the application, the financial condition of applicant remaining substantially the same.

I recommend that the application be granted upon the following condition, viz, that applicant shall procure from the trustee an authorization to do what it now applies for permission to do, as we believe that the trustee should be familiar with such transactions and we desire the record to show that the transaction is understood and approved by the trustee.

I submit the following order:

**ORDER.**

Whereas the Union Home Telephone and Telegraph Corporation, a corporation, of Los Angeles, California, entered into an agreement with the Title Insurance and Trust Company of Los Angeles, by the terms of which agreement the Union Home Telephone and Telegraph Corporation agreed to deposit with the Title Insurance and Trust Company \$500,000 par value of its first mortgage gold bonds as security for an issue of \$200,000 par value debenture bonds; and

Whereas the Union Home Telephone and Telegraph Corporation did not have the full amount of \$500,000 of its first mortgage bonds in its treasury and in order to complete said amount borrowed \$161,000 par value of said bonds held by the Contracting and Engineering Company and entered into an agreement with said Contracting and Engineering Company to return said \$161,000 par value of said bonds upon demand; and

Whereas demand has been made by the Contracting and Engineering Company upon the Union Home Telephone and Telegraph Corporation for the return of said bonds; and

Whereas without going into the financial condition of said Union Home Telephone and Telegraph Corporation, the Commission finds that compliance with said agreement between the Union Home Telephone and Telegraph Corporation and the Contracting and Engineering Company could probably be enforced in the courts, and finds further that the rights of those who hold the bonds of said Union Home Telephone and Telegraph Corporation will not be interfered with or impaired by granting applicant's petition to be permitted to return said bonds as per its agreement with the Contracting and Engineering Company; now, therefore,

*Be it ordered* that the Union Home Telephone and Telegraph Corporation be and it is hereby granted permission to issue \$161,000 par value of its first mortgage gold bonds and to deliver same or the proceeds of same to the Contracting and Engineering Company in the discharge of its aforesaid obligation, provided that before this order shall become operative the Union Home Telephone and Telegraph Corporation shall have filed with this Commission evidence in writing signed by the Title Insurance and Trust Company that it is familiar with the transaction comprehended herein and, as trustee, approved of the same.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of May, 1913.

DECISION No. 642.

IN THE MATTER OF THE APPLICATION OF CARRIERS  
PARTIES TO PACIFIC FREIGHT TARIFF BUREAU EX-  
CEPTION SHEET 1-C, C. R. C. No. 70, OF F. W. GOMPH,  
AGENT, FOR PERMISSION TO ALTER CLASSIFICATION,  
SO AS TO INCREASE RATES AND CHARGES.

Application No. 291.

*Decided May 6, 1913.*

Applicants, parties to Pacific Freight Tariff Bureau Exception Sheet No. 1-C, C. R. C. No. 70, petitioned for permission to make changes in said exception sheet relating to classification on various articles, which changes, if permitted, would result in the increase of rates for the transportation of such commodities.

Application granted as to certain items and denied as to other items upon grounds stated.

A. P. Matthew, for the Western Pacific, the Southern Pacific, and the Santa Fe companies.

*P. P. Hastings*, for the Pacific Freight Tariff Bureau.

*H. G. Toll*, for the Southern Pacific Company.

*Archibald Gray*, for the Western Pacific Railway Company.

*G. D. Squires*, for the Southern Pacific Company.

*William R. Wheeler* and *Seth Mann*, for the Traffic Bureau of the Chamber of Commerce of San Francisco.

*Warren Gregory*, for the American Can Company.

*Henry P. Dimond*, for the Cannerymen.

*F. M. Hill*, for the Fresno Traffic Association.

#### REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an application by the carriers parties to Pacific Freight Tariff Bureau Exception Sheet No. 1-C, C. R. C. No. 70, to the Western Classification, to make changes in classification on various articles, which changes, if permitted, will result in the increase of rates for the transportation of such commodities.

The Commission required the carriers to print the present classification requirements and the proposed changes, together with such reasons as are calculated to justify the proposed changes.

We will consider the items which it is proposed to change in the order in which they appear in the Exception Sheet.

*Item 1—Agricultural Implements:* It is proposed to increase the minimum weight on agricultural implements from 20,000 to 24,000 pounds, which latter minimum weight is that prescribed by the Western Classification.

The Commission has received some protest with reference to harvesters but we do not understand that the carriers contemplate any change in the minimum weight on harvesters which is published in Item No. 3 of the Exception Sheet. Interested shippers present at the hearing expressed a willingness to have the minimum weight on agricultural implements increased from 20,000 to 24,000 pounds.

We believe that it is to the interest of shipper and farmer alike to have equipment loaded to its full efficiency, and in view of the fact that shippers offer no objections and on the contrary acquiesce in the change, the proposed change will be approved.

*Item 27—Cans, Tin, carloads:* The present item carries minimum weights for various sized cars, as outlined below, at Class "C" rating:

|   | Capacity.               |                           |
|---|-------------------------|---------------------------|
|   | Less than<br>5 gallons. | Five gallons<br>and over. |
| Cars of 28 feet or less in length, inside dimensions....                        | 10,000 lbs.             | 8,500 lbs.                |
| Cars over 28 feet, but not over 34 feet in length, in-<br>side dimensions ..... | 13,500 lbs.             | 11,000 lbs.               |
| Cars over 34 feet, but not over 40 feet in length, in-<br>side dimensions ..... | 15,500 lbs.             | 11,500 lbs.               |
| Cars over 40 feet, but not over 45 feet in length, in-<br>side dimensions ..... |                         | 12,250 lbs.               |
| Cars over 45 feet, but not over 50 feet in length, in-<br>side dimensions ..... |                         | 13,000 lbs.               |

Minimum charge of \$5.00 per car, except when class rate governed by the current Western Classification makes less, in which the current Western Classification governs.

It is proposed to cancel this item and allow the straight Western Classification rating to apply, which is fourth class, minimum carload weight 14,000 pounds, subject to Rule 6-B. This rule provides a scale of minimum weights, according to the size of the car used, and in case of tin cans will be as follows:

|   | Pounds. |
|---|---------|
| Cars of 33 ft. 6 in. and under in length, inside dimensions.....                    | 12,740  |
| Cars over 33 ft. 6 in. to and including 34 ft. 6 in. in length, inside dimensions.. | 13,160  |
| Cars over 34 ft. 6 in. to and including 35 ft. 6 in. in length, inside dimensions.. | 13,580  |
| Cars over 35 ft. 6 in. to and including 36 ft. 6 in. in length, inside dimensions.. | 14,000  |
| Cars over 36 ft. 6 in. to and including 37 ft. 6 in. in length, inside dimensions.. | 14,420  |
| Cars over 37 ft. 6 in. to and including 38 ft. 6 in. in length, inside dimensions.. | 14,840  |
| Cars over 38 ft. 6 in. to and including 39 ft. 6 in. in length, inside dimensions.. | 15,260  |
| Cars over 39 ft. 6 in. to and including 40 ft. 6 in. in length, inside dimensions.. | 15,680  |
| Cars over 40 ft. 6 in. to and including 41 ft. 6 in. in length, inside dimensions.. | 16,100  |
| Cars over 41 ft. 6 in. to and including 42 ft. 6 in. in length, inside dimensions.. | 16,520  |
| Cars over 42 ft. 6 in. to and including 43 ft. 6 in. in length, inside dimensions.. | 16,940  |
| Cars over 43 ft. 6 in. to and including 44 ft. 6 in. in length, inside dimensions.. | 17,360  |
| Cars over 44 ft. 6 in. to and including 45 ft. 6 in. in length, inside dimensions.. | 17,780  |
| Cars over 45 ft. 6 in. to and including 46 ft. 6 in. in length, inside dimensions.. | 18,200  |
| Cars over 46 ft. 6 in. to and including 47 ft. 6 in. in length, inside dimensions.. | 18,620  |
| Cars over 47 ft. 6 in. to and including 48 ft. 6 in. in length, inside dimensions.. | 19,040  |
| Cars over 48 ft. 6 in. to and including 49 ft. 6 in. in length, inside dimensions.. | 19,460  |
| Cars over 49 ft. 6 in. to and including 50 ft. 6 in. in length, inside dimensions.. | 19,880  |

The canning industries protested vigorously against the changes proposed by the carriers in the item above referred to. We called on the carriers for detailed statements of all shipments of cans which moved during years 1911-12, and while it is impossible to determine accurately the amount of revenue involved in the proposed changes we believe it safe to assume that if the changes requested are permitted to become effective it will result in increased revenue to the carriers amounting to at least \$25,000 per annum.

Carriers seek to justify the increased rate on grounds that the present rates are non-compensatory; that the traffic is not bearing its just share of the burden of operation. The cannery, however, point out that these rates, while in many cases appearing to be low, cover movements upon which the carriers subsequently received another move-

ment and that the cans shipped to the canneries are immediately filled with fruit and reshipped to other destinations, thereby providing the carriers the additional rates provided for canned goods of various kinds.

Unquestionably in many instances the carriers receive an inadequate revenue for the transportation of cans, particularly to nearby points or to points where the class rates have been borne down by water competition. For instance, we find many cars moving to Stockton for approximately \$9.00 per car; to Oleum, \$5.00 per car; to Sunnyvale, Santa Clara and San Jose for \$7.75 per car; to Richmond for \$5.00 per car; to Sacramento for \$12.65 per car. The rates to a number of other points might be mentioned but we believe the above sufficiently illustrates our point; and we further believe that no fair-minded man will contend that all of the rates we have mentioned yield the carriers a fair return for the service they perform. At the same time we notice movements to other points where the revenue accruing to the carriers under the present rates appears to be adequate. For example, we note a large number of cars moved from San Francisco to Gonzales, a distance of 135 miles, at a rate of \$4.60 per ton; the average revenue per car being slightly over \$50. We believe in this case the revenue per ton per car mile is, to say the least, adequate, and the carriers have not justified any increase in this instance.

A review of the records of various commodities handled by the carriers indicates that on but eight out of thirty commodities did the Southern Pacific Company receive as great revenue per car for handling freight distances 100 to 150 miles as it did on shipments of cans San Francisco to Gonzales, and in these eight instances where the revenue was approximately the same or greater than that derived from the cans the cars were loaded two and three times as heavy.

We cite these facts to substantiate our belief that in many cases the carriers receive adequate revenue for the transportation of cans under present rates.

It is apparent that the application with reference to tin cans cannot be disposed of by the application of any particular classification rating. In some instances we are frank to concede the revenue derived from the present classification rating is too low and in some cases it would appear to be the reverse; and while we will deny the application of the carriers to publish changes in line with their application we will entertain an application to publish specific commodity rates and will invite all interested shippers to participate in a discussion, which we hope will tend to the establishment of just and reasonable rates on shipments of cans which we feel is not possible by the application of any general provision of the classification.

*Item 38—Coke, carloads:* It is proposed to increase the minimum weight from 30,000 to 40,000 pounds.

As before stated, we believe it to the interest of all concerned to load cars as heavily as possible; and this feature of the application will be granted.

*Item 46—Ferris Wheel Outfits:* It is proposed to eliminate the note which reads as follows: "On intrastate traffic within California the aggregate charge should not exceed that which would accrue by use of third class rate at actual weight, observing carload minimum weight of 16,000 pounds." At present ferris wheel outfits move under Class "B," minimum weight 20,000 pounds, in connection with the provision previously quoted, and the elimination of the note will have little or no effect on the rates to be paid by shippers; consequently the application will be granted.

*Item 52—Forms, Tools and Material for Constructing Concrete Pipe:* It is proposed to eliminate that portion of this item which provides for one half of fifth class on these articles when returned to original shipping point, via the same route as the original outbound movement. No objection was made to this change and the carriers state that little or no business is moving under this provision.

Under all the circumstances we believe the application should be granted.

*Item 53—Fresh Fruit and Vegetables:* It is proposed to increase the minimum weight on these commodities from 24,000 to 26,000 pounds and the carriers in justification of the proposed change assert that these commodities are handled at very low class rates and can be readily loaded to minimum of 26,000 pounds.

The carriers in their application call attention to the fact that the minimum weight on interstate traffic is 26,000 pounds and state that there is no commercial reason why a lower minimum should apply on intrastate traffic.

The Commission does not concede that all of the class rates in the State are reasonable, nor do we see what bearing the minimum weight of 26,000 pounds on interstate shipments has on this application. Shipments destined to interstate points move in refrigerator cars and are loaded at packing-houses where it is always possible to load this amount in a car. Shipments moving locally within the State are consigned principally to canneries and are loaded at depots and non-agency stations. When a farmer has a contract with a cannery to ship a certain tonnage of fruit it is to his interest to get it loaded and started to the cannery as soon as possible. Weather conditions enter into the situation very materially, and in the early and latter part of the shipping season



it is not always possible for a farmer to load even 24,000 pounds. The records furnished by the carriers demonstrate very clearly that the great majority of cars are loaded far in excess of 24,000 pounds, or even 26,000 pounds which the carriers now suggest as a minimum weight.

I am satisfied that the only reason a farmer does not ship more than 24,000 pounds at any one time in a car is because the fruit is not ready. In warm weather the fruit grower must get his car under way to the cannery without delay and when train time arrives a car in the process of loading must be shipped regardless of the fact that it may not contain all the farmer desires to ship or amounts to 24,000 pounds. Therefore, I do not agree with the applicants' statement that there is no commercial necessity for a lower minimum than 26,000 pounds. I do not believe the increasing of the minimum weight from 24,000 pounds to 26,000 pounds on green fruit will materially increase the loading, because the statements furnished clearly show that cars have been loaded regardless of minimum weight restrictions and it is my belief that whenever a car is loaded with less than 24,000 pounds that it is impossible for the shipper to load any more than the actual weight in the car and get the same started on its way to the cannery without running risk of loss by decay. It would appear from the records that over 80 per cent of the cars are now loaded with between 30,000 and 50,000 pounds of fruit and that but an insignificant number carry less than 26,000 pounds. Therefore, if this application is granted, the carriers will gain nothing in the way of increased loading and the fruit grower who must load his cars according to weather conditions, labor conditions, and many other elements, and whom, we believe, has no desire to ship cars of less than the present minimum weight, is obliged to carry an extra burden of 2,000 pounds.

Under all the circumstances I do not believe this application should be granted.

*Item 59—Grapes, Wine:* Present classification 80 per cent of Class "C" and it is proposed to change this to Class "D." The bulk of this traffic moves under commodity rates and interested shippers acquiesce in the change; the carriers having agreed to publish commodity rates equal to 80 per cent of Class "C" wherever movement developed.

This application will be granted.

*Item 61—Fruit Peelings and Parings:* Present classification rating is 80 per cent of Class "E," which it is proposed to change to Class "E."

Like a number of other items which it is proposed to change the carriers desire to discontinue the practice of providing a classification based on a certain percentage of a class rate. This is in line with

instructions from the Interstate Commerce Commission to either **discontinue** the practice or publish a full line of rates on each commodity. The carriers have indicated a willingness to publish commodity rates on **fruit peelings and parings** at the request of interested shippers; therefore this application will be granted.

*Item 64—Hay and Straw, including Bean Straw, compressed in bales, and Cactus Leaves dried, in packages, carloads:* In this item the carriers proposed to make certain changes in minimum weights, and they are authorized to make such changes in minimum weights as were authorized by the Commission in its decision in Case No. 259 involving this same question.

*Item 77—Lime Rock:* Present classification 80 per cent of Class "E," which the carriers propose to cancel. Shippers made no objection to the cancellation of this provision, inasmuch as commodity rates lower than 80 per cent of Class "E" are now published from all shipping points.

The application will be granted.

*Item 78—Live Stock:* Carriers propose to change this item, first to eliminate the provision of 80 per cent of Class "B" applying on sheep, hogs and goats, and substitute therefor Class "B"; second, that sheep, calves, goats, lambs or kids, in less than carload lots, will not be accepted unless crated. We do not believe it reasonable that carriers should be required to handle less than carload lots of these animals unless they are properly crated.

The carriers have provided a lower minimum weight on live stock when shipped under Class "B" rating which overcomes the increase from 80 per cent of Class "B" to Class "B." Therefore, this is but a technical advance and the application will be granted.

*Item 79—1. Live Stock:* This item provides for reduction in minimum weights on sheep, hogs and goats when shipped under Class "B" rating, referred to in connection with Item 78, and will be granted.

*Item 81—Merry-go-round Outfit:* The item at present carries a note similar to the provision for the movement of ferris wheels, as per Item 46. The carriers desire to eliminate that note which provides for the alternate use of third class at 16,000 pounds minimum weight, Class "B" minimum 20,000 pounds, and to maintain but one provision, i. e., Class "B" 20,000 pounds.

For the same reasons that we approved Item 46 we will approve this item; it appearing that it will make little or no difference to the shippers.

*Item 85—Milk and Cream:* Proposed changes were withdrawn and will not be considered.

*Item 93—1. Ore, Concentrates, Copper Matte and Oxide of Copper:* The present item provides for less than carload shipments and classification based on a certain percentage of Class "C" rate according to the amount and value of ore shipped. It is proposed to change this item to fourth class on less than carload shipments which, in some cases, would bring about an increase in rate. Certain changes are also proposed in carload classification, according to the valuation, but these changes do not affect any business inasmuch as carriers now provide specific commodity rates from producing points to the smelters.

The application to change this item will be granted.

*Item 110—Salt:* The present minimum carload weight is 30,000 pounds, which it is proposed to increase to 40,000 pounds.

No objection appearing in the proposed change and considering also the fact that many of the shipments now move under commodity rates at a minimum of 40,000 pounds, the application will be granted.

*Item 111—Sea Grass or Sea Weed:* Present classification on these articles in Exception Sheet is first class less than carload, fifth class carloads.

The carriers propose to cancel these provisions inasmuch as there is no movement whatever and the application will be granted.

*Item 112—Seed, Flax:* Present classification in Exception Sheet Class "D," which it is proposed to cancel because of no movement.

The application will be granted.

*Item 113—Seed, Garden or Beet, in packages, returned to original shippers:* Exception Sheet at the present provides half rates on shipments of garden and beet seed returned to original shippers, which the carriers desire to cancel, and seek to justify the proposed change on the ground that the Interstate Commerce Commission has stated that carriers cannot lawfully apply upon the same kind of freight returned to shippers a lower rate than upon the same commodity outbound.

As a general proposition, it may be said that the applicants' contentions in this regard are to a certain extent correct. There are, however, some very good reasons why the carriers should deviate from established practice in connection with shipments of seed returned to original shippers. Unless seed which is unsold in stores throughout the State is returned to the seed grower for testing it is natural that the storekeeper will continue to sell this seed regardless of the fact that it may fail altogether to produce a crop. It is to the carriers' interests, as well as to the farmers and storekeepers, that after each season unsold seed should be returned to the seed grower, thereby eliminating the liability of stale seed being sold the public.

Protestants testified that one firm had invested \$50,000 in facilities to ship seed, the unsold portion of which would be returned in the box

at the end of each season; that to permit the cancellation of half rate for return movements of unsold seed would have a disastrous effect on their business.

It may be claimed that there is discrimination in favor of seed shippers unless similar concessions are made to all other classes of returned shipments. In this we can not agree, for the reason that the discrimination, if it exists at all, could not possibly be considered undue.

Considering all of the circumstances and conditions the application will be denied.

*Item 114—Seed, Mustard:* Present Exception Sheet carries a provision for Class "B" rating, which carriers desire to cancel because of no movement of mustard seed other than wild mustard, and the fact that wild mustard seed is carried as Class "B" in the Western Classification, no harm can come from the proposed change—which will be permitted.

*Item 117—Shells, Clam, Oyster and Mussel:* Exception Sheet at present provides 80 per cent of Class "E" on these commodities, which the carriers desire to cancel and permit straight Western Classification rating upon Class "E" to apply. The carriers stipulate, however, that they will publish commodity rates on basis of 80 per cent of Class "E" wherever there is a movement; and under these circumstances the change will be permitted.

*Item 122—Spermaceti:* Exceptions to Western Classification at present provide less than carload third class—carloads fifth class, which the applicants desire to cancel because of no movement by freight train service. For this reason change will be permitted.

*Item 134—Tule:* Exceptions to Western Classification provide Class "E" on this commodity, which applicants desire to cancel on the ground that there is no movement, and if any movement develops carriers stipulate that they will publish specific commodity rates to cover based on Class "E."

Under these circumstances the application is granted.

*Item 137—Water, Mineral:* At present exceptions to Western Classification provide one half of first class on less than carload shipments in certain territory and includes the free return of empty containers. The carriers propose to change this rating from fourth class and to eliminate provisions for the free return of empty containers.

We know of no reason why the classification should be different on mineral water in one part of the State than in another. Neither do we believe empty containers should be returned free in case of mineral water shipments and charges made on empty containers which were used in the transportation of other commodities. Change will be permitted.

*Item 138—Water, Distilled:* The provisions for this commodity are the same as for mineral water mentioned in Item 137; and for the same reasons outlined in permitting change in that item changes will be permitted in this item.

*Item 140—Wheat, Poisoned, in double sacks:* The present classification rating on this commodity is third class less than carload and fourth class on carloads, which the carriers desire to cancel and permit Western Classification rating to apply which are the same as outlined above, with the exception that shipments must be made in boxes.

We believe this a reasonable requirement in order to prevent poisoned wheat becoming scattered around car floors; and the application will be granted.

I recommend the following order:

**ORDER.**

The carriers parties to Pacific Freight Tariff Bureau Exception Sheet No. 1-C, C. R. C. No. 70, having filed with this Commission an application to make certain changes in said Exception Sheet, which changes would result in increasing the rates for the transportation of freight, and a regular hearing having been held,

*It is hereby ordered* that the application of the carriers parties to Pacific Freight Tariff Bureau Exception Sheet No. 1-C, C. R. C. No. 70, are hereby authorized to make changes in the classification as outlined in application filed with this Commission and covering Items Nos. 1, 38, 46, 52, 59, 61, 77, 78, 79-1, 84, 93-1, 110, 111, 112, 114, 117, 122, 134, 137, 138, 140.

Application to make changes in Items Nos. 27, 53, 85 and 113 are denied.

Permission is hereby granted to correct Item No. 64 in accordance with decision of this Commission in Case No. 259.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco this 6th day of May, 1913.

## DECISION No. 643.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN  
PACIFIC COMPANY TO ABANDON DURING THE WINTER  
MONTHS THE AGENCIES OF CERTAIN STATIONS.

Application No. 472.

*Decided May 6, 1913.*

## REPORT OF THE COMMISSION.

## ORDER DISMISSING APPLICATION.

The matter involved in the above entitled application having been disposed of informally,

*It is hereby ordered* that the above entitled application be and the same is hereby dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 6th day of May, 1913.

## DECISION No. 644.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE  
PROPERTY OF PACIFIC COAST RAILWAY COMPANY  
WITHIN THE STATE OF CALIFORNIA.

Case No. 181.

*Decided May 6, 1913.*

Proceeding upon motion of the Commission to ascertain the various elements entering into the value of respondent's property. Findings made as to facts but not on the value of the property, irrespective of the purposes for which the value is ascertained.

Findings of fact: (1) that the "reproduction value," as that term has heretofore been defined (opinion, Case No. 206), of the operative physical property of respondent, as of June 30, 1912, is the sum of \$1,970,843.63; (2) that the "present value," as that term is heretofore defined (*id.*) of the operative physical property of respondent, as of June 30, 1912, is the sum of \$1,529,646.16.

*James Anderson*, chief engineer, Pacific Coast Railway Company.

*E. W. Clark*, vice-president, Pacific Coast Railway Company.

*J. M. Sims*, superintendent, Pacific Coast Railway Company.

## REPORT OF THE COMMISSION.

## OPINION AND FINDINGS.

*GORDON*, Commissioner.

This proceeding was brought upon the Commission's initiative for the purpose of ascertaining various elements entering into the value

of the property of Pacific Coast Railway Company. For the general procedure in these so-called railroad valuation cases, and for a general description of the nature of the work performed by the Commission's engineering department in connection therewith, reference is hereby made to this Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company. As in that case so here I shall make findings of fact and shall not make findings on the value of the property irrespective of the purposes for which the value is ascertained.

Findings will be made as to only the "reproduction value" and "present value" of the operative physical property owned by the company, as these terms are defined and used by the Commission in said opinion and findings in Case No. 206.

As directed by the Commission the Pacific Coast Railway Company filed with the Commission the inventory of its physical property and the estimated "reproduction value" and "present value" thereof.

The final summary sheet of this inventory is attached to this opinion and marked Exhibit "A." This summary sheet as originally filed contained under heading "original cost" an amount which was stated to be the book cost of the property, the same as is shown in its annual reports to the Commission as representing cost of construction and equipment. This original or book cost, however, was not based upon the actual cost of the property in cash, and obviously includes certain amounts, particularly under Account No. 47, representing adjustments in connection with transfers of property upon the basis of securities and does not represent the actual cash outlay which was necessary to complete and place the property in condition to operate. The company stated that its original cost records were destroyed in the San Francisco fire in 1906, except those for a branch line built subsequently to that date.

The Commission's engineering department, therefore, has made no attempt and does not report the original cost of the property. The book cost above mentioned, however, was submitted for the information of the Commission as stated. This department made a detailed examination of the property on the ground and, based upon the facts ascertained, together with inventory and statements submitted by the company, arrived at estimates of the "reproduction value" and "present value" of operative physical property of the company as of June 30, 1912, which estimates are contained in a report filed with the Commission, dated April 1, 1913. The final sheet of this inventory and valuation is attached to this opinion and marked Exhibit "B," except that the figures contained in the original summary sheet, under

heading "original cost" are omitted for the reasons above stated, viz: that same were only the book cost as contained in the annual reports of the company and in fact did not represent the actual original cost.

A hearing was held before the Commission in this proceeding on February 3, 1913, which hearing was adjourned and subsequently reset before the Commission on April 30, 1913. At the latter hearing the company was represented by Mr. James Anderson, its chief engineer, Mr. E. W. Clark, its vice president, and Mr. J. M. Sims, its superintendent. Mr. James Anderson, speaking for the company, stated that in his opinion the estimates of "reproduction value" and "present value" as submitted by the engineering department of the Commission, were fair and that the company had no wish to question them in any way, and were perfectly willing to accept them.

In view of these statements, and based upon the report filed by the engineering department of the Commission, I therefore find as a fact that the "reproduction value" as that term has heretofore been defined, of the operative physical property of Pacific Coast Railway Company, as of June 30, 1912, is the sum of \$1,970,843.63.

I further find as a fact that the "present value," as that term is heretofore defined, of the operative physical property of Pacific Coast Railway Company, as of June 30, 1912, is the sum of \$1,529,646.16.

The foregoing opinion and findings is hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of May, 1913.



## EXHIBIT "A."

Name of owner, Pacific Coast Railway Company; operating company, same; all lines complete; from Port San Luis to all terminals; miles main line track, 103.05; miles yard tracks, etc., 12.62; total, 115.67 miles. Valuation as of June 30, 1912.

| Class No. | Form No. | I. C. C. Asset No. | Classes.  | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|--------------------|---|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                  | Right of way and station grounds.....                                 |                | \$223,618 10        | 100             | \$223,618 10   |
| 2         | 2        | 3                  | Real estate.....  |                | 12,015 40           | 100             | 12,015 40      |
| 3         | 3        | 4                  | Grading.....  |                | 278,348 45          | 103             | 288,019 42     |
| 4         | 4        | 5                  | Tunnels.....  |                |                     |                 |                |
| 5         | 5        | 6                  | Steel bridges and trusses.....  |                | 2,007 00            | 90              | 2,616 30       |
| 6         | 6        | 6                  | Pile and frame trestles.....  |                | 51,024 54           | 80              | 43,218 36      |
| 7         | 7        | 6                  | Culverts.....   |                | 8,635 95            | 67              | 5,365 95       |
| 8         | 8        | 7                  | Ties.....   |                | 119,735 65          | 51              | 61,549 55      |
| 9         | 9        | 8                  | Rails.....  |                | 250,176 39          | 90              | 225,158 72     |
| 10        | 10       | 9                  | Frogs and switches.....   |                | 8,359 00            | 80              | 6,689 00       |
| 11        | 11       | 10                 | Track fastenings and other material.....                              |                | 44,517 70           | 83              | 36,789 64      |
| 12        | 12       | 11                 | Ballast.....  |                | 23,531 20           | 100             | 23,531 30      |
| 13        | 13       | 12                 | Tracklaying and surfacing.....  |                | 70,930 00           | 100             | 70,930 00      |
| 14        | 14       | 13                 | Roadway tools.....  |                | 1,981 59            | 50              | 990 75         |
| 15        | 15       | 14                 | Fencing right of way.....   |                | 85,305 00           | 73              | 62,554 00      |
| 16        | 16       | 15                 | Crossings and signs.....  |                | 2,263 80            | 52              | 1,273 15       |
| 17        | 17       | 16                 | Interlocking plants.....  |                |                     |                 |                |
| 18        | 18       | 16                 | Signal apparatus.....   |                |                     |                 |                |
| 19        | 19       | 17                 | Telegraph and telephone lines.....                                    |                |                     |                 |                |
| 20        | 20       | 18                 | Station buildings and fixtures.....                                   |                | 25,200 00           | 60              | 15,240 00      |
| 21        | 21       | 18                 | Platforms, walks, paving and curb.....                                |                | 2,254 24            | 53              | 1,188 84       |
| 22        | 22       | 19                 | General office buildings and fixtures.....                            |                | 969 00              | 55              | 534 50         |
| 23        | 23       | 20                 | Shop buildings and engine houses.....                                 |                | 6,780 20            | 81              | 5,469 76       |
| 24        | 24       | 20                 | Transfer and turntables, cinder pits, etc.....                        |                | 4,300 00            | 85              | 3,670 00       |
| 25        | 25       | 20                 | Miscellaneous shop buildings and structures.....                      |                | 2,580 00            | 60              | 1,530 00       |
| 26        | 26       | 21                 | Shop machinery and tools.....   |                | 5,305 00            | 60              | 3,178 00       |
| 27        | 27       | 22                 | Water stations.....   |                | 9,830 00            | 72              | 7,097 00       |
| 28        | 28       | 23                 | Fuel stations.....  |                | 1,000 00            | 80              | 800 00         |
| 29        | 29       | 24                 | Grain elevators.....  |                |                     |                 |                |
| 30        | 30       | 25                 | Storage warehouses.....   |                | 39,100 00           | 88              | 34,475 00      |
| 31        | 31       | 26                 | Dock and wharf property.....  |                | 85,140 00           | 90              | 74,826 00      |
| 32        | 32       | 27                 | Electric light plants.....  |                |                     |                 |                |
| 33        | 33       | 28                 | Electric lines.....   |                |                     |                 |                |
| 34        | 34       | 29                 | Electric power transmission.....                                      |                | 31,074 08           | 75              | 23,305 56      |
| 35        | 35       | 30                 | Gas producing plants.....   |                |                     |                 |                |
| 36        | 36       | 31                 | Miscellaneous structures.....   |                | 2,910 00            | 61              | 1,767 00       |
| 37        | ---      | 1                  | Total classes 1 to 36, inclusive.....                                 |                | \$1,400,943 29      | 88              | \$1,237,353 30 |
| 38        | 37       | 32                 | Engineering, 5 per cent, 1 to 36, inclusive.....                      |                | 70,047 16           | 100             | 70,047 16      |
| 39        | 38       | 33                 | Transportation of men and material, 3 per cent, 1 to 36.....          |                | 42,028 29           | 100             | 42,028 29      |
| 40        | 38       | 34                 | Rent of equipment.....  |                |                     |                 |                |
| 41        | ---      | 35                 | Repairs of equipment, 1 per cent, 1 to 36.....                        |                | 14,009 43           | 100             | 14,009 43      |
| 42        | ---      | 35                 | Earning and operating expenses during construction.....               |                |                     |                 |                |
| 43        | ---      | 35                 | Injuries to persons.....  |                |                     |                 |                |
| 43        | ---      | 36                 | Cost of road purchased.....   |                |                     |                 |                |
| 44        | 39       | 37                 | Total classes 1 to 43, inclusive.....                                 |                | \$1,527,028 17      | 89              | \$1,363,138 18 |
| 45        | ---      | 38                 | Steam locomotives.....  |                | 50,396 79           | 71              | 35,635 90      |
| 46        | 40       | 39                 | Electric locomotives.....   |                | 8,400 30            | 94              | 7,882 20       |
| 47        | 41       | 40                 | Passenger train cars.....   |                | 27,100 00           | 63              | 17,000 00      |
| 48        | 42       | 41                 | Freight train cars.....   |                | 97,250 00           | 69              | 67,335 00      |
| 49        | 43       | 42                 | Work equipment.....   |                | 3,988 10            | 76              | 3,044 29       |
| 50        | ---      | 43                 | Floating equipment.....   |                |                     |                 |                |
| 51        | 44       | 44                 | Total classes 1 to 49, inclusive.....                                 |                | \$1,714,163 36      | 87              | \$1,494,355 57 |
| 52        | 44       | 45                 | Law expenses, 3 per cent, classes 1 to 36, inclusive.....             |                | 51,424 89           | 100             | 51,424 89      |
| 53        | 45       | 46                 | Stationery and printing.....  |                | 5,000 00            | 100             | 5,000 00       |
| 54        | ---      | 47                 | Insurance.....  |                | 3,000 00            | 100             | 3,000 00       |
| 55        | 45       | 48                 | Taxes.....  |                | 20,000 00           | 100             | 20,000 00      |
| 56        | ---      | 49                 | Total classes 1 to 53, inclusive.....                                 |                | \$1,763,588 25      | 88              | \$1,573,790 46 |
| 57        | 46       | ---                | Interest and commission, 10 per cent, classes 1 to 53, inclusive..... |                | 179,358 82          | 100             | 179,358 82     |
| 58        | ---      | 50                 | Other expenditures.....   |                |                     |                 |                |
| 59        | ---      | 51                 | Contingencies, 5 per cent, classes 1 to 53, inclusive.....            |                | 89,679 41           | 100             | 89,679 41      |
| 60        | ---      | 52                 | Stores and supplies on hand for use in California.....                |                | 37,320 29           | 100             | 37,320 29      |
| 61        | ---      | 53                 | Grand total.....  |                | \$2,099,946 77      | 895             | \$1,880,138 98 |
| 62        | ---      | 54                 | Average per mile for main line track.....                             |                | 20,377 04           |                 | 18,244 92      |

## EXHIBIT "B."

Name of owner, Pacific Coast Railway Company; operating company, same; all lines in California; from Port San Luis to all terminals; miles main track, 95.62; miles yard tracks, etc., 29.08; total, 115.70 miles.  
Valuation as of June 30, 1912; M. M. Cooke, field inspector and office compiler; date compiled, January 18, 1913.

| Class No.                                 | Form No. | I. C. C. No. | Classes.   | Original cost. | Reproduction value. | Concl. per cent. | Present value. |
|---|----------|--------------|--|----------------|---------------------|------------------|----------------|
| 1   | 1        | 2            | Right of way and station grounds.....                                |                | \$172,020 84        | 100              | \$172,020 84   |
| 2   | 2        | 3            | Real estate.....   |                | 1,500 00            | 100              | 1,500 00       |
| 3   | 3        | 4            | Grading.....   |                | 292,074 69          | 100              | 292,074 69     |
| 4   | 4        | 5            | Tunnels.....   |                |                     |                  |                |
| 5   | 5        | 6            | Steel bridges and trusses.....                                       |                | 2,907 00            | 60               | 1,744 20       |
| 6   | 6        | 6            | Pile and frame trestles.....   |                | 60,858 81           | 51               | 30,933 88      |
| 7   | 7        | 6            | Culverts.....  |                | 8,266 50            | 60               | 5,382 97       |
| 8   | 8        | 7            | Ties.....  |                | 187,862 84          | 53               | 77,468 06      |
| 9   | 9        | 8            | Rails.....   |                | 288,438 89          | 65               | 189,018 63     |
| 10  | 10       | 9            | Frogs and switches.....  |                | 8,514 32            | 67               | 5,754 56       |
| 11  | 11       | 10           | Track fastenings and other material.....                             |                | 32,881 80           | 59               | 19,489 87      |
| 12  | 12       | 11           | Ballast.....   |                | 25,635 28           | 61               | 21,731 94      |
| 13  | 13       | 12           | Tracklaying and surfacing.....                                       |                | 95,727 90           | 66               | 63,809 45      |
| 14  | 14       | 13           | Roadway tools.....   |                | 2,531 16            | 50               | 1,265 57       |
| 15  | 15       | 14           | Fencing right of way.....  |                | 69,098 80           | 37               | 26,102 96      |
| 16  | 16       | 15           | Crossings and signs.....   |                | 1,773 30            | 56               | 985 95         |
| 17  | 17       | 16           | Interlocking plants.....   |                |                     |                  |                |
| 19  | 24       | 19           | Poles and fixtures (see Account No. 29).....                         |                | 7,916 75            | 55               | 4,404 25       |
| 19  | 19       | 17           | Telegraph and telephone lines.....                                   |                |                     |                  |                |
| 20  | 20       | 18           | Station buildings and fixtures.....                                  |                | 27,992 50           | 62               | 16,920 50      |
| 21  | 21       | 18           | Platforms, walks, paving and curb.....                               |                | 4,525 70            | 44               | 1,985 26       |
| 22  | 22       | 19           | General office buildings and fixtures.....                           |                | 889 00              | 60               | 542 00         |
| 23  | 23       | 20           | Shop buildings and engine houses.....                                |                | 9,875 20            | 90               | 7,196 01       |
| 24  | 24       | 20           | Transfer and turntables, cinder pits, etc.....                       |                | 4,100 00            | 80               | 3,400 00       |
| 25  | 25       | 20           | Miscellaneous shop buildings and structures.....                     |                | 1,914 24            | 67               | 1,303 17       |
| 26  | 26       | 21           | Shop machinery and tools.....  |                | 9,081 55            | 62               | 5,621 06       |
| 27  | 27       | 22           | Water stations.....  |                | 10,560 00           | 72               | 7,659 20       |
| 28  | 28       | 23           | Fuel stations.....   |                | 969 62              | 80               | 775 70         |
| 29  | 29       | 24           | Distribution system (see Account No. 29).....                        |                | 24,335 20           | 55               | 18,430 89      |
| 30  | 30       | 25           | Storage warehouses.....  |                | 40,710 19           | 61               | 25,017 64      |
| 31  | 31       | 26           | Dock and wharf property.....   |                | 110,712 00          | 80               | 88,569 60      |
| 32  | 32       | 27           | Electric light plants.....   |                |                     |                  |                |
| 33  | 33       | 28           | Electric power plants.....   |                |                     |                  |                |
| 34  | 34       | 29           | Electric power transmission (see Accounts Nos. 19 and 22).....       |                |                     |                  |                |
| 35  | 35       | 30           | Gas producing plants.....  |                |                     |                  |                |
| 36  | 36       | 31           | Miscellaneous structures.....  |                | 5,819 30            | 73               | 4,250 20       |
| Total classes 1 to 36, inclusive.....     |          |              |  |                | \$1,470,723 68      | 74               | \$1,091,389 05 |
| 37  | 37       | 32           | Engineering, 5 per cent, 1 to 36, inclusive.....                     |                | 73,536 18           | 100              | 73,536 18      |
| 38  | 38       | 33           | Transportation of men and material.....                              |                |                     |                  |                |
| 39  | 39       | 34           | Rent of equipment.....   |                |                     |                  |                |
| 40  | 40       | 35           | Repairs of equipment.....  |                |                     |                  |                |
| 41  | 41       | 35           | Earning and operating expenses during construction.....              |                |                     |                  |                |
| 42  | 42       | 35           | Injuries to persons.....   |                |                     |                  |                |
| 43  | 43       | 36           | Cost of road purchased.....  |                |                     |                  |                |
| Total classes 1 to 43, inclusive.....     |          |              |  |                | \$1,544,259 86      | 74               | \$1,164,925 23 |
| 44  | 44       | 37           | Steam locomotives.....   |                | 50,396 79           | 70               | 35,260 15      |
| 45  | 45       | 38           | Electric locomotives.....  |                | 8,400 30            | 81               | 6,821 50       |
| 46  | 46       | 39           | Passenger train cars.....  |                | 27,100 00           | 60               | 15,866 00      |
| 47  | 47       | 40           | Freight train cars.....  |                | 96,250 00           | 68               | 65,688 00      |
| 48  | 48       | 41           | Work equipment.....  |                | 13,638 10           | 76               | 10,546 70      |
| 49  | 49       | 42           | Floating equipment.....  |                |                     |                  |                |
| Total classes 1 to 49, inclusive.....     |          |              |  |                | \$1,740,345 05      | 74               | \$1,299,147 58 |
| 50  | 50       | 43           | Law expenses, 1 per cent, classes 1 to 49, inclusive.....            |                | 17,403 45           | 100              | 17,403 45      |
| 51  | 51       | 44           | Stationery and printing.....   |                |                     |                  |                |
| 52  | 52       | 45           | Insurance.....   |                |                     |                  |                |
| 53  | 53       | 46           | Taxes.....   |                |                     |                  |                |
| Total classes 1 to 53, inclusive.....     |          |              |  |                | \$1,757,748 50      | 74               | \$1,316,551 03 |
| 54  | 54       | 47           | Interest and commission, 5 per cent, classes 1 to 53, inclusive..... |                | 87,887 42           | 100              | 87,887 42      |
| 55  | 55       | 48           | Other expenditures.....  |                |                     |                  |                |
| 56  | 56       | 48           | Contingencies, 5 per cent, classes 1 to 53, inclusive.....           |                | 87,887 42           | 100              | 87,887 42      |
| 57  | 57       | 46           | Stores and supplies on hand for use in California.....               |                | 37,320 29           | 100              | 37,320 29      |
| Grand total.....                          |          |              |  |                | \$1,970,843 63      | 74               | \$1,529,646 16 |
| Average per mile for main line track..... |          |              |  |                | 20,611 20           |                  | 15,907 13      |

## DECISION No. 645.

ROSENWALD & KAHN ET AL.  
*vs.*  
SOUTHERN PACIFIC COMPANY.

Case No. 234.

*Decided May 6, 1913.*

Complainants, located on the Placerville branch of defendant's railroad, alleged that the class and all commodity rates on freight shipments between Sacramento, San Francisco and points on said branch line were excessive, unreasonable and discriminatory. No evidence being offered in support of the allegation that the commodity rates were excessive, the issue was confined to the reasonableness of the class rates. Complainants largely relied upon comparisons of rates charged between certain other points and upon expressions of opinion. Defendant sought to justify its present rates mainly upon the ground that the branch line does not pay operating expenses and claimed that empty car movements into Placerville constituted a heavy item of the expense.

*Held.* The value of rate comparisons depends, to a great extent, on the similarity of conditions under which various rates are made and with respect to the comparisons made by complainants there is, for reasons stated, no similarity whatever.

*Held.* The Commission can not decide questions of this kind on the mere statement of an interested shipper that the rate is too high when such statement is supported by nothing but his individual opinion. Such evidence is no more conclusive than the mere statement of a transportation company that the rates are just and reasonable.

*Held.* Carriers can not single out a particular portion of a line or system and burden it with excessive rates for the reason that it may not contribute as much traffic as another section of the same line or system. As a matter of fact, it clearly appears that the Placerville branch as a whole does pay operating expenses.

From all the evidence, the Commission found that the class rates in question were excessive and unreasonable and ordered defendant to publish and file, within thirty days, the rates found by the Commission to be just and reasonable.

*F. Allyn Orr*, for Complainants.

*C. W. Durbrow*, for Defendant.

## REPORT OF THE COMMISSION.

LOVELAND and GORDON, *Commissioners*.

In this complaint various shippers and receivers of freight located at points along or adjacent to the Placerville branch of the Southern Pacific Company allege that the class and commodity rates maintained by the defendant for the transportation of freight between Sacramento, San Francisco and points on the Placerville branch are excessive, unreasonable and discriminatory. No specific commodity rates, however, have been complained of; the complainants relying on the very general allegation that all commodity rates between the points mentioned are excessive and unreasonable.

We will not, of course, consider the original and amended complaints for the reason that the case was heard on the pleadings appearing in

the second amended complaint filed with the Commission, August 9, 1912.

The original complaint in this case was filed the latter part of December, 1911, to which the Southern Pacific Company demurred because the complaint did not state facts sufficient to constitute cause of action and which demurrer was sustained by the Commission. An amended complaint was filed June 11, 1912, and the second amended complaint, as above stated, August 9, 1912.

At the hearing the complainants presented some exhibits to substantiate their claims that the class rates are excessive and unreasonable. No exhibits were introduced nor testimony offered in support of the allegations that the commodity rates are excessive.

The issues, therefore, may be confined to the reasonableness of the class rates between Sacramento, San Francisco and points on the Placer-ville branch. The question of discrimination seems to have been based largely on the fact that shippers located at interior points in Amador County could receive freight cheaper via Lone than via Latrobe.

The exhibits introduced by the complainants showed comparisons with rates for similar distances on other branch lines of the defendant in California as well as rates for similar distances in other states. As we have repeatedly said before, the value of these comparisons depends to a great extent on the similarity of conditions under which various rates are made.

Witnesses for the complainants testified that in their judgment rates complained of were too high, and we may say at this time that the Commission can not decide questions of this kind on the mere statement of an interested shipper that the rate is too high when such statement is supported by nothing but his individual opinion. We can no more consider this kind of evidence as conclusive than we can the mere statement of a transportation company that the rates are just and reasonable. Satisfactory rate adjustments can never be made on this basis, for the reason that a great many shippers always think the rates are too high while the carriers generally maintain that the rates are either reasonable or too low.

If this opinion and order has been delayed beyond what may be regarded by some as a reasonable period, it is because the Commission has been compelled to call for a considerable amount of statistical data and make a great many calculations in connection with such data which should either have been presented by the defendant in justification of its rates, or brought out by the complainants to sustain their allegations that the rates are unreasonable.

The defendant in justification of its present rate adjustment introduced a number of exhibits similar to those introduced by the complainants. And here again we have a situation where no evidence is

introduced to show that the conditions under which the rates were made in other sections are analogous or similar to those involved in this proceeding.

Stripped of all its trimmings the case amounts to this: Complainants allege certain rates are unreasonable, excessive and discriminatory and witness for the defendant maintained that the Placerville branch line does not pay operating expenses, and further testified that there is a very heavy empty car movement on to this branch, particularly with reference to that part of the line east of Folsom. It was stated that the empty movement is approximately nine to one, *i. e.*, defendant moves one load into Placerville to every eight or nine loads moving out for which empties have to be taken in. In considering this question, we will first take up the empty car movement into Placerville, which, it is claimed, constitutes a heavy item of expense in the operation of this branch line, and particularly the statement that for every carload of freight that goes in eight empties accompany it to take care of the outbound business.

According to the statements furnished by the defendant there was shipped into the town of Placerville for the calendar year 1911, 7,864 tons of freight of all descriptions, and there was forwarded from Placerville 5,583 tons. It must be remembered that the bulk of the tonnage going into Placerville consists of less than carload lots of merchandise, and it is not customary to load these cars of miscellaneous merchandise in excess of 10,000 or 12,000 pounds. The business from Placerville, we dare say, is to a large extent carload traffic moving out at a much higher minimum weight than the carloads of merchandise are loaded going in. Hence, it will be seen that if 7,864 tons moved in and 5,583 tons moved out, when we consider the loading capacity of the cars inward bound with that in the opposite direction the empty car movement instead of being into Placerville is just the reverse.

Exclusive of the rock shipments moving from Folsom and the dredger fields which, from the nature of the commodity, requires an inbound empty car movement, we find, according to defendant's Exhibit No. 6, that approximately 62,000 tons of all commodities moved from the branch. As against this 37,000 tons moved on to the branch; and considering the fact that a large percentage of the inbound tonnage consisted of merchandise which loads lightly in a car, we believe it is plainly apparent that there is no such empty car movement as has been testified to. Likewise, we are inclined to disregard the statement of witness for the defendant to the effect that it costs approximately six times as much to handle the same business which now moves between Sacramento and Placerville as it would to handle it to Colfax. If we

considered this statement very seriously it would be apparent to us that the rates to Colfax are in need of immediate revision.

Will state, at this time, in connection with the charge of discrimination, that the conditions surrounding the making of the rates to Ione are not at all similar to those surrounding the movements to Latrobe. The rates to Ione are lower for the reason that the defendant carries a 10-cent scale of rates to Stockton which is reflected as far as Ione, and no such condition exists on Latrobe movements.

From data furnished by the defendant in its Exhibit No. 7 we believe a fair distribution of the earnings on traffic to and from the Placerville branch will result in approximately \$220,000 of freight revenue being credited to that branch for the calendar year 1911, and that passenger revenue will amount to approximately \$100,000 per annum, or a total gross revenue which should be credited to this branch of approximately \$320,000 per annum. It may be true that a large percentage of this revenue is derived from the rock traffic originating at Folsom and the dredger fields, but, as we have said before, and as has been repeatedly held by the courts, carriers can not single out a particular portion of a line or system and burden it with excessive rates for the reason that it may not contribute as much traffic as another section of the same line or system.

The operating expenses of the Southern Pacific Company in 1911 were 60.41 per cent of its operating revenue, and in 1912 were 60.14 per cent of its operating revenue. We have no reason to believe that the operation of the Placerville branch will exceed this percentage. In fact, the operation of many roads the mileage of which is approximately the same as that of the Placerville branch and the earnings of which compare quite favorably, substantiates this conclusion, particularly when it is considered that roads operated independently, the mileage of which is approximately the same as the Placerville branch, are subject to overhead and administrative expenses which are not present on this branch.

We cannot consider, therefore, as accurate, the statement that the Placerville branch, or more particularly that portion east of Folsom, does not pay operating expenses when, as a matter of fact, it clearly appears to us that the contrary is the case, considering the branch as a whole.

From all of the evidence in this case we find that the class rates of the defendant for the transportation of freight between Sacramento, San Francisco and points on the Placerville branch are excessive and unreasonable. The complainants have not sustained the allegation that the commodity rates are unreasonable and the Commission will not consider the very general allegation that all commodity rates are unreasonable.

We find as a fact that the class rates set out in Schedules 1 and 2, attached hereto and made a part hereof, are reasonable class rates for the transportation of freight over the line of the defendant between Sacramento, San Francisco and Placerville branch line points.

We recommend the following order:

**ORDER.**

Rosenwald & Kahn and other shippers having filed with this Commission a complaint attacking the reasonableness of the class and commodity rates of the Southern Pacific Company for the transportation of freight under class rates between Sacramento, San Francisco and points on the Placerville branch, and a regular hearing having been held, and finding as a fact that the class rates of the defendant between Sacramento, San Francisco and Placerville branch line points are excessive and unreasonable and basing this order on the findings of fact set out in the foregoing opinion,

*It is hereby ordered* that the Southern Pacific Company publish and file with this Commission, within thirty (30) days from date hereof, in the manner prescribed by law, tariffs containing rates as set out in Schedules 1 and 2, attached hereto and made a part hereof, which rates the Commission finds to be just and reasonable and hereby establishes the same as just and reasonable rates to be charged by the defendant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, this 6th day of May, 1913.

## SCHEDULE No. 1.

| Between—         | and—                  | Class rates in cents per 100 pounds. |    |    |    |    |    |    |    |    |    |
|------------------|-----------------------|--------------------------------------|----|----|----|----|----|----|----|----|----|
|                  |                       | 1                                    | 2  | 3  | 4  | 5  | A  | B  | C  | D  | E  |
| Sacramento ----- | Brighton -----        | 7                                    | 6  | 6  | 5  | 5  | 5  | 3  | 3  | 2½ | 2½ |
|                  | Ramona -----          | 8                                    | 7  | 6  | 6  | 5  | 5  | 4  | 3½ | 3  | 2½ |
|                  | Perkins -----         | 8                                    | 7  | 6  | 6  | 5  | 5  | 4  | 3½ | 3  | 2½ |
|                  | Manlove -----         | 9                                    | 8  | 7  | 6  | 6  | 6  | 4  | 4  | 3½ | 2½ |
|                  | Mayhew -----          | 10                                   | 9  | 8  | 7  | 7  | 7  | 5  | 4  | 4  | 3  |
|                  | Routier -----         | 11                                   | 10 | 9  | 8  | 7  | 7  | 5  | 4  | 4  | 3  |
|                  | Mills -----           | 12                                   | 11 | 10 | 8  | 8  | 8  | 5  | 5  | 4  | 4  |
|                  | Cordova -----         | 13                                   | 12 | 10 | 9  | 8  | 8  | 6  | 5  | 5  | 4  |
|                  | Jura -----            | 14                                   | 13 | 11 | 10 | 9  | 9  | 6  | 6  | 5  | 4  |
|                  | Holly -----           | 14                                   | 13 | 11 | 10 | 9  | 9  | 6  | 6  | 5  | 4  |
|                  | Fair Oaks -----       | 15                                   | 14 | 12 | 11 | 10 | 10 | 7  | 6  | 5  | 4½ |
|                  | Nimbus -----          | 15                                   | 14 | 12 | 11 | 10 | 10 | 7  | 6  | 5  | 4½ |
|                  | Alder Creek -----     | 16                                   | 14 | 12 | 11 | 10 | 10 | 7  | 6  | 5  | 4½ |
|                  | Natoma -----          | 16                                   | 14 | 12 | 11 | 10 | 10 | 7  | 6  | 5  | 4½ |
|                  | Folsom -----          | 17                                   | 15 | 13 | 12 | 10 | 10 | 7  | 6  | 5  | 4½ |
|                  | Donnelly -----        | 17                                   | 15 | 13 | 12 | 10 | 10 | 7  | 6  | 5  | 4½ |
|                  | White Rock -----      | 19                                   | 17 | 15 | 13 | 11 | 11 | 8  | 7  | 6  | 5  |
|                  | Cothrin -----         | 21                                   | 18 | 16 | 14 | 12 | 12 | 8  | 7  | 6  | 5  |
|                  | Latrobe -----         | 22                                   | 19 | 17 | 14 | 12 | 12 | 9  | 7  | 6  | 5  |
|                  | Flonellis -----       | 23                                   | 20 | 17 | 15 | 13 | 13 | 9  | 7  | 6  | 5  |
|                  | Brela -----           | 23                                   | 20 | 17 | 15 | 13 | 13 | 9  | 7  | 6  | 5  |
|                  | Brandon -----         | 24                                   | 20 | 18 | 16 | 13 | 13 | 10 | 8  | 7  | 5  |
|                  | Dugan -----           | 25                                   | 21 | 19 | 16 | 14 | 14 | 10 | 8  | 7  | 6  |
|                  | Bullard -----         | 25                                   | 21 | 19 | 16 | 14 | 14 | 10 | 8  | 7  | 6  |
|                  | Bennett -----         | 27                                   | 23 | 20 | 18 | 15 | 15 | 11 | 9  | 7  | 6  |
|                  | Shingle Springs ----- | 29                                   | 25 | 22 | 19 | 16 | 16 | 12 | 9  | 8  | 7  |
|                  | Cummings -----        | 31                                   | 26 | 23 | 20 | 17 | 17 | 12 | 10 | 9  | 7  |
|                  | El Dorado -----       | 32                                   | 27 | 24 | 21 | 18 | 18 | 13 | 10 | 9  | 7  |
|                  | Diamond Springs ----- | 33                                   | 28 | 25 | 21 | 18 | 18 | 13 | 11 | 9  | 7  |
|                  | Plummer -----         | 34                                   | 29 | 26 | 22 | 19 | 19 | 14 | 11 | 9  | 8  |
|                  | Placerville -----     | 35                                   | 30 | 26 | 23 | 19 | 19 | 14 | 11 | 10 | 8  |



## SCHEDULE No. 2.

| Between—       | and—                  | Class rates in cents per 100 pounds. |    |    |    |    |    |    |     |    |     |
|----------------|-----------------------|--------------------------------------|----|----|----|----|----|----|-----|----|-----|
|                |                       | 1                                    | 2  | 3  | 4  | 5  | A  | B  | C   | D  | E   |
| San Francisco— | Ramona .....          | 25                                   | 22 | 19 | 18 | 15 | 15 | 11 | 10½ | 8  | 6½  |
|                | Perkins .....         | 25                                   | 22 | 19 | 18 | 15 | 15 | 11 | 10½ | 8  | 6½  |
|                | Manlove .....         | 25                                   | 22 | 19 | 18 | 15 | 15 | 11 | 10½ | 8  | 6½  |
|                | Mayhew .....          | 25                                   | 22 | 19 | 18 | 15 | 15 | 11 | 10½ | 8  | 6½  |
|                | Routier .....         | 25                                   | 22 | 19 | 18 | 15 | 15 | 11 | 10½ | 8  | 6½  |
|                | Mills .....           | 26                                   | 23 | 21 | 18 | 16 | 16 | 11 | 10½ | 9  | 7   |
|                | Cordova .....         | 26                                   | 23 | 21 | 18 | 16 | 16 | 11 | 10½ | 9  | 7   |
|                | Jura .....            | 26                                   | 23 | 21 | 18 | 16 | 16 | 11 | 10½ | 9  | 7   |
|                | Holly .....           | 27                                   | 24 | 21 | 19 | 17 | 17 | 12 | 11  | 9  | 7   |
|                | Fair Oaks .....       | 27                                   | 24 | 21 | 19 | 17 | 17 | 12 | 11  | 9  | 7   |
|                | Nimbus .....          | 28                                   | 25 | 22 | 20 | 18 | 18 | 13 | 11  | 9  | 7½  |
|                | Alder Creek .....     | 29                                   | 25 | 22 | 20 | 18 | 18 | 13 | 11  | 9  | 7½  |
|                | Natoma .....          | 29                                   | 25 | 22 | 20 | 18 | 18 | 13 | 11  | 9  | 7½  |
|                | Folsom .....          | 30                                   | 26 | 23 | 21 | 18 | 18 | 13 | 11  | 9  | 7½  |
|                | Donnelly .....        | 30                                   | 26 | 23 | 21 | 18 | 18 | 13 | 11  | 9  | 7½  |
|                | White Rock .....      | 31                                   | 27 | 24 | 21 | 18 | 18 | 13 | 11  | 10 | 8½  |
|                | Oothrin .....         | 33                                   | 28 | 25 | 22 | 19 | 19 | 13 | 11  | 10 | 8½  |
|                | Latrobe .....         | 34                                   | 29 | 26 | 22 | 19 | 19 | 14 | 11  | 10 | 8½  |
|                | Flonellis .....       | 35                                   | 30 | 26 | 23 | 20 | 20 | 14 | 11  | 10 | 8½  |
|                | Brela .....           | 35                                   | 30 | 26 | 23 | 20 | 20 | 14 | 11  | 10 | 8½  |
|                | Brandon .....         | 36                                   | 30 | 27 | 24 | 20 | 20 | 15 | 12  | 11 | 8½  |
|                | Dugan .....           | 37                                   | 31 | 28 | 24 | 21 | 21 | 15 | 12  | 11 | 9½  |
|                | Bullard .....         | 37                                   | 31 | 28 | 24 | 21 | 21 | 15 | 12  | 11 | 9½  |
|                | Bennett .....         | 39                                   | 33 | 29 | 26 | 22 | 22 | 16 | 13  | 11 | 9½  |
|                | Shingle Springs ..... | 41                                   | 35 | 31 | 27 | 23 | 23 | 17 | 13  | 12 | 10½ |
|                | Cummings .....        | 43                                   | 36 | 32 | 28 | 24 | 24 | 17 | 14  | 13 | 10½ |
|                | El Dorado .....       | 44                                   | 37 | 33 | 29 | 25 | 25 | 18 | 14  | 13 | 10½ |
|                | Diamond Springs ..... | 45                                   | 38 | 34 | 29 | 25 | 25 | 18 | 15  | 13 | 10½ |
|                | Plummer .....         | 46                                   | 39 | 35 | 30 | 26 | 26 | 19 | 15  | 13 | 11½ |
|                | Placerville .....     | 47                                   | 40 | 35 | 31 | 26 | 26 | 19 | 15  | 14 | 11½ |

## DECISION No. 646.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE  
PROPERTY OF PAJARO VALLEY CONSOLIDATED RAIL-  
ROAD COMPANY WITHIN THE STATE OF CALIFORNIA.

Case No. 182.

*Decided May 7, 1913.*

Proceeding on motion of Commission to ascertain the various elements entering into the value of the property of respondent. Findings made as to facts, but not on the question of the value of the property, irrespective of the purposes for which it is ascertained. Opinion and order in Case No. 206 referred to for general procedure in valuation cases and for definitions of terms used.

Findings of fact: (1) that the original cost of the operative physical property of respondent, as of June 30, 1912, including the cost of all permanent improvements, additions and betterments, is \$587,454.70; (2) that the reproduction value of the operative physical property of respondent, as of June 30, 1912, is \$791,539.00; (3) that the present value of the operative physical property of respondent, as of June 30, 1912, is the sum of \$576,233.07.

*A. L. Whittle and H. E. Jones, for Pajaro Valley Consolidated Railroad Company.*

## REPORT OF THE COMMISSION.

## OPINION AND FINDINGS.

*Eshleman, Commissioner.*

This proceeding was brought on the Commission's initiative for the purpose of ascertaining the various elements entering into the value of the property of Pajaro Valley Consolidated Railroad Company. For the general procedure in these so-called railroad valuation cases and for a general description of the nature of the work performed by this Commission's engineering department in connection therewith, reference is hereby made to this Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of Stockton Terminal and Eastern Railway Company. As in that case, so also here will findings of fact be made and a finding will not be made on the question of the value of the property irrespective of the purposes for which it is ascertained.

The terms "reproduction value" and "present value" as used herein are defined in said opinion and findings in Case No. 206. As directed by the Commission, the Pajaro Valley Consolidated Railroad Company filed with the Commission the inventory of its physical property, the "original cost" and estimated "reproduction" and "present" values thereof. The final summary sheet of this inventory is attached to this opinion and marked Exhibit "A."

The Commission's engineering department made a detailed examina-

tion of the property on the ground and based upon the facts ascertained and also from data secured from its office concerning the original cost of the property, and the inventory submitted by the company, arrived at estimates of the original cost, reproduction value, and present value of its operative physical property as of June 30, 1912, which estimates are contained in a report filed with the Commission by said engineering department dated October 16, 1912.

A hearing was held before the Commission in this proceeding on February 3, 1913, which hearing was adjourned and subsequently reset before the Commission on April 25, 1913. At the latter hearing the company was represented by A. L. Whittle, attorney, and H. E. Jones, office manager.

With the notice of the first hearing, the company was furnished a copy of the report of the engineering department above referred to. At the hearing on April 25, 1913, the representatives of the company appearing before the Commission stated that, in their opinion, the estimates of original cost, reproduction value, and present value of the operative physical property owned by the company as of date June 30, 1912, and reported to the Commission by its engineering department in said report of October 16, 1912, were fair and reasonable, and that the company had no protest to make of same. A copy of the summary sheet showing the original cost, reproduction value, and present value of the operative physical property of said company as of June 30, 1912, is hereto attached and marked Exhibit "B."

In view of the foregoing statements, and based upon reports which have been filed with the Commission, I find as a fact that the original cost of the operative physical property of the Pajaro Valley Consolidated Railroad as of June 30, 1912, including the cost of all permanent improvements, additions and betterments, is \$587,454.70.

I further find as a fact that the reproduction value, as that term has heretofore been defined, of the operative physical property of said company as of June 30, 1912, is \$791,539.60.

I further find as a fact that the present value, as that term is heretofore defined by the Commission, of the operative physical property of said company as of June 30, 1912, is the sum of \$576,233.07.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of May, 1913.

## EXHIBIT "A."

Name of owner, Pajaro Valley Consolidated Railroad Company, operating company, same; miles main line track, 41.16; miles yard tracks, etc., 9.65; total, 51.11 miles, in Monterey and Santa Cruz counties. Valuation as of June 30, 1911; date compiled, July 10, 1912.

| Class No. | Form No. | I. C. G. No. | Classes.   | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|--------------|--|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2            | Right of way and station grounds.....                                | \$43,077 45    | \$72,319 05         |                 | \$72,319 05    |
| 2         | 2        | 3            | Real estate.....   |                |                     |                 |                |
| 3         | 3        | 4            | Grading.....   | 48,050 30      | 57,757 20           |                 | 63,865 76      |
| 4         | 4        | 5            | Tunnels.....   |                |                     |                 |                |
| 5         | 5        | 6            | Steel bridges and trusses.....                                       |                |                     |                 |                |
| 6         | 6        | 6            | Pile and frame trestles.....   | 42,526 16      | 44,539 74           |                 | 22,882 50      |
| 7         | 7        | 6            | Culverts.....  | 2,551 59       | 2,759 91            |                 | 1,739 85       |
| 8         | 8        | 7            | Ties.....  | 42,300 09      | 68,321 87           |                 | 35,486 18      |
| 9         | 9        | 8            | Rails.....   | 135,288 76     | 137,833 68          |                 | 83,987 14      |
| 10        | 10       | 9            | Frogs and switches.....  | 10,107 63      | 9,615 00            |                 | 5,952 05       |
| 11        | 11       | 10           | Track fastenings and other material.....                             | 13,151 33      | 14,668 42           |                 | 9,052 35       |
| 12        | 12       | 11           | Ballast.....   | 15,923 08      | 15,923 08           |                 | 15,923 08      |
| 13        | 13       | 12           | Tracklaying and surfacing.....                                       | 32,678 93      | 35,356 02           |                 | 35,336 02      |
| 14        | 14       | 13           | Roadway tools.....   |                |                     |                 |                |
| 15        | 15       | 14           | Fencing right of way.....  | 20,170 31      | 29,695 56           |                 | 15,940 04      |
| 16        | 16       | 15           | Crossings and signs.....   | 181 98         | 181 98              |                 | 115 90         |
| 17        | 17       | 16           | Interlocking plants.....   |                |                     |                 |                |
| 18        | 18       | 16           | Signal apparatus.....  |                |                     |                 |                |
| 19        | 19       | 17           | Telegraph and telephone lines.....                                   | 2,472 03       | 2,472 03            |                 | 1,198 08       |
| 20        | 20       | 18           | Station buildings and fixtures.....                                  | 1,245 00       | 1,485 00            |                 | 700 50         |
| 21        | 21       | 18           | Platforms, walks, paving and curb.....                               | 604 00         | 604 00              |                 | 604 00         |
| 22        | 22       | 19           | General office buildings and fixtures.....                           |                |                     |                 |                |
| 23        | 23       | 20           | Shop buildings and engine houses.....                                | 2,257 00       | 2,506 13            |                 | 1,488 68       |
| 24        | 24       | 20           | Transfer and turntables, cinder pits, etc.....                       | 400 00         | 460 00              |                 | 230 00         |
| 25        | 25       | 20           | Miscellaneous shop buildings and structures.....                     | 120 00         | 138 00              |                 | 98 90          |
| 26        | 26       | 21           | Shop machinery and tools.....  |                |                     |                 |                |
| 27        | 27       | 22           | Water stations.....  | 820 00         | 943 00              |                 | 471 50         |
| 28        | 28       | 23           | Fuel stations.....   | 55 00          | 63 25               |                 | 51 87          |
| 29        | 29       | 24           | Grain elevators.....   |                |                     |                 |                |
| 30        | 30       | 25           | Storage warehouses.....  | 5,518 82       | 6,346 36            |                 | 4,295 62       |
| 31        | 31       | 26           | Dock and wharf property.....   |                |                     |                 |                |
| 32        | 32       | 27           | Electric light plants.....   |                |                     |                 |                |
| 33        | 33       | 28           | Electric power plants.....   |                |                     |                 |                |
| 34        | 34       | 29           | Electric power transmission.....                                     |                |                     |                 |                |
| 35        | 35       | 30           | Gas producing plants.....  |                |                     |                 |                |
| 36        | 36       | 31           | Miscellaneous structures.....  | 1,354 24       | 1,557 14            |                 | 1,150 95       |
| 37        | 37       | 1            | Total classes 1 to 36, inclusive.....                                | \$420,843 70   | \$503,229 42        |                 | \$372,959 11   |
| 38        | 38       | 32           | Engineering, ..per cent, 1 to 36, inclusive.....                     | 4,657 50       | 4,657 50            |                 | 4,657 50       |
| 39        | 39       | 33           | Transportation of men and material.....                              |                |                     |                 |                |
| 40        | 40       | 34           | Rent of equipment.....   |                |                     |                 |                |
| 41        | 41       | 35           | Repairs of equipment.....  |                |                     |                 |                |
| 42        | 42       | 35           | Earning and operating expenses during construction.....              |                |                     |                 |                |
| 43        | 43       | 36           | Injuries to persons.....   |                |                     |                 |                |
| 44        | 44       | 37           | Cost of road purchased.....  |                |                     |                 |                |
| 45        | 45       | 38           | Total classes 1 to 43, inclusive.....                                | \$425,501 20   | \$510,886 92        |                 | \$377,616 61   |
| 46        | 46       | 39           | Steam locomotives.....   | 47,661 68      | 61,786 87           |                 | 31,567 42      |
| 47        | 47       | 40           | Electric locomotives.....  |                |                     |                 |                |
| 48        | 48       | 41           | Passenger train cars.....  | 10,846 15      | 20,512 62           |                 | 10,696 84      |
| 49        | 49       | 42           | Freight train cars.....  | 111,799 94     | 130,913 46          |                 | 78,543 27      |
| 50        | 50       | 43           | Work equipment.....  |                |                     |                 |                |
| 51        | 51       | 44           | Floating equipment.....  |                |                     |                 |                |
| 52        | 52       | 45           | Total classes 1 to 49, inclusive.....                                | \$595,808 97   | \$724,099 87        |                 | \$498,224 14   |
| 53        | 53       | 46           | Law expenses, ..per cent, classes 1 to 36, inclusive.....            |                |                     |                 |                |
| 54        | 54       | 47           | Stationery and printing.....   |                |                     |                 |                |
| 55        | 55       | 48           | Insurance.....   |                |                     |                 |                |
| 56        | 56       | 49           | Taxes.....   |                |                     |                 |                |
| 57        | 57       | 50           | Interest and commission, ..per cent, classes 1 to 53, inclusive..... |                |                     |                 |                |
| 58        | 58       | 51           | Other expenditures.....  |                |                     |                 |                |
| 59        | 59       | 52           | Contingencies, ..per cent, classes 1 to 53, inclusive.....           |                |                     |                 |                |
| 60        | 60       | 53           | Stores and supplies on hand for use in California.....               |                |                     |                 |                |
| 61        | 61       | 54           | Grand total.....   | \$595,808 97   | \$724,099 87        |                 | \$498,224 14   |
| 62        | 62       | 55           | Average per mile for main line track.....                            | 14,370 69      | 17,465 02           |                 | 12,016 98      |

## EXHIBIT "B."

Name of owner, Pajaro Valley Consolidated Railroad; operating company, same; main line and all branches from Watsonville to Salinas; miles main line track, 41.46; miles yard tracks, etc., 9.65; total, 51.11 miles.  
Valuation as of June 30, 1912; Richard Sachse and M. M. Cooke, field inspectors and office compilers; date compiled, October 1, 1912.

| Class No. | Form No. | I. C. C. Acct. No. | Classes.   | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|--------------------|--|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                  | Right of way and station grounds.....                                | \$43,077 45    | \$91,875 25         | 100             | \$91,875 25    |
| 2         | 2        | 3                  | Real estate.....   |                |                     |                 |                |
| 3         | 3        | 4                  | Grading.....   | 48,053 67      | 42,733 07           | 105             | 44,809 72      |
| 4         | 4        | 5                  | Tunnels.....   |                |                     |                 |                |
| 5         | 5        | 6                  | Steel bridges and trusses.....                                       | 6,094 87       | 6,094 87            | 54              | 3,275 21       |
| 6         | 6        | 6                  | Pile and frame trestles.....   | 33,809 17      | 29,344 63           | 52              | 15,179 56      |
| 7         | 7        | 6                  | Culverts.....  | 2,552 51       | 2,434 48            | 61              | 1,492 74       |
| 8         | 8        | 7                  | Ties.....  | 43,477 34      | 61,216 35           | 51              | 31,489 78      |
| 9         | 9        | 8                  | Rails.....   | 130,084 13     | 148,832 66          | 66              | 97,817 77      |
| 10        | 10       | 9                  | Frogs and switches.....  | 10,107 63      | 6,969 87            | 65              | 4,525 08       |
| 11        | 11       | 10                 | Track fastenings and other material.....                             | 13,127 85      | 15,206 78           | 65              | 9,940 48       |
| 12        | 12       | 11                 | Ballast.....   | 15,935 56      | 11,200 44           | 100             | 11,200 44      |
| 13        | 13       | 12                 | Tracklaying and surfacing.....                                       | 28,469 34      | 35,425 50           | 65              | 22,899 14      |
| 14        | 14       | 13                 | Roadway tools.....   | 198 75         | 198 75              | 50              | 99 38          |
| 15        | 15       | 14                 | Fencing right of way.....  | 20,169 85      | 24,950 25           | 52              | 13,080 77      |
| 16        | 16       | 15                 | Crossings and signs.....   | 181 98         | 125 98              | 63              | 80 50          |
| 17        | 17       | 16                 | Interlocking plants.....   |                |                     |                 |                |
| 18        | 18       | 16                 | Signal apparatus.....  |                |                     |                 |                |
| 19        | 19       | 17                 | Telegraph and telephone lines.....                                   | 2,472 83       | 2,483 05            | 53              | 1,316 32       |
| 20        | 20       | 18                 | Station buildings and fixtures.....                                  | 1,245 00       | 1,485 00            | 51              | 760 50         |
| 21        | 21       | 18                 | Platforms, walks, paving and curbs.....                              | 604 00         | 604 00              | 100             | 604 00         |
| 22        | 22       | 19                 | General office buildings and fixtures.....                           |                |                     |                 |                |
| 23        | 23       | 20                 | Shop buildings and engine houses.....                                | 2,257 50       | 2,596 13            | 57              | 1,488 68       |
| 24        | 24       | 20                 | Transfer and turntables, cylinder pits, etc.....                     | 400 00         | 460 00              | 50              | 230 00         |
| 25        | 25       | 20                 | Miscellaneous shop buildings and structures.....                     |                |                     |                 |                |
| 26        | 26       | 21                 | Shop machinery and tools.....  |                |                     |                 |                |
| 27        | 27       | 22                 | Water stations.....  | 3,033 15       | 3,234 15            | 76              | 2,463 65       |
| 28        | 28       | 23                 | Fuel stations.....   | 56 00          | 63 25               | 81              | 51 87          |
| 29        | 29       | 24                 | Grain elevators.....   |                |                     |                 |                |
| 30        | 30       | 25                 | Storage warehouses.....  | 5,478 82       | 6,300 36            | 68              | 4,265 72       |
| 31        | 31       | 26                 | Dock and wharf property.....   |                |                     |                 |                |
| 32        | 32       | 27                 | Electric light plants.....   |                |                     |                 |                |
| 33        | 33       | 28                 | Electric power plants.....   |                |                     |                 |                |
| 34        | 34       | 29                 | Electric power transmission.....                                     |                |                     |                 |                |
| 35        | 35       | 30                 | Gas producing plants.....  |                |                     |                 |                |
| 36        | 36       | 31                 | Miscellaneous structures.....  | 1,514 24       | 1,740 14            | 72              | 1,261 70       |
| 37        | 37       | 32                 | Total classes 1 to 36, inclusive.....                                | \$412,400 64   | \$495,654 96        | 73              | \$360,268 26   |
| 38        | 38       | 33                 | Engineering, 5 per cent, 1 to 36, inclusive.....                     | 4,657 60       | 24,782 75           | 100             | 24,782 75      |
| 39        | 39       | 33                 | Transportation of men and material.....                              |                |                     |                 |                |
| 40        | 40       | 34                 | Rent of equipment.....   |                |                     |                 |                |
| 41        | 41       | 35                 | Repairs of equipment.....  |                |                     |                 |                |
| 42        | 42       | 35                 | Earning and operating expenses during construction.....              |                |                     |                 |                |
| 43        | 43       | 36                 | Injuries to persons.....   |                |                     |                 |                |
| 44        | 44       | 37                 | Cost of road purchased.....  |                |                     |                 |                |
| 45        | 45       | 38                 | Total classes 1 to 43, inclusive.....                                | \$417,058 24   | \$520,437 71        | 74              | \$385,051 01   |
| 46        | 46       | 39                 | Steam locomotives.....   | 47,661 68      | 46,075 64           | 64              | 30,913 72      |
| 47        | 47       | 40                 | Electric locomotives.....  |                |                     |                 |                |
| 48        | 48       | 41                 | Passenger train cars.....  | 10,846 15      | 20,512 62           | 78              | 16,038 14      |
| 49        | 49       | 42                 | Freight train cars.....  | 111,888 63     | 130,913 46          | 56              | 72,609 73      |
| 50        | 50       | 43                 | Work equipment.....  |                |                     |                 |                |
| 51        | 51       | 44                 | Floating equipment.....  |                |                     |                 |                |
| 52        | 52       | 44                 | Total classes 1 to 49, inclusive.....                                | \$587,454 70   | \$719,939 43        | 70              | \$504,632 60   |
| 53        | 53       | 45                 | Law expenses, 1 per cent, classes 1 to 36, inclusive.....            |                | 7,199 39            | 100             | 7,199 39       |
| 54        | 54       | 46                 | Stationery and printing.....   |                |                     |                 |                |
| 55        | 55       | 47                 | Insurance.....   |                |                     |                 |                |
| 56        | 56       | 48                 | Taxes.....   |                |                     |                 |                |
| 57        | 57       | 49                 | Total classes 1 to 53, inclusive.....                                |                | \$727,138 82        | 71              | \$511,832 29   |
| 58        | 58       | 50                 | Interest and commission, 3 per cent, classes 1 to 53, inclusive..... |                | 21,814 16           | 100             | 21,814 16      |
| 59        | 59       | 51                 | Other expenditures.....  |                |                     |                 |                |
| 60        | 60       | 52                 | Contingencies, 5 per cent, classes 1 to 53, inclusive.....           |                | 36,356 94           | 100             | 36,356 94      |
| 61        | 61       | 53                 | Stores and supplies on hand for use in California.....               |                | 6,229 68            | 100             | 6,229 68       |
| 62        | 62       | 54                 | Grand total.....   | \$587,454 70   | \$791,539 60        | 73              | \$576,233 07   |
| 63        | 63       | 55                 | Average per mile for main line track.....                            | 14,169 19      | 19,091 64           |                 | 13,808 53      |

## DECISION No. 647.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE  
PROPERTY OF AMADOR CENTRAL RAILROAD COM-  
PANY OF THE STATE OF CALIFORNIA.

Case No. 150.

*Decided May 7, 1913.*

Proceeding on motion of Commission to ascertain various elements entering into the value of respondent's property. Findings made as to facts but not on the question of the value of the property, irrespective of the purposes for which the value is ascertained. Opinion and order in Case No. 206 referred to for general procedure in valuation cases and for definitions of terms used.

Findings of fact: (1) that the reproduction value of the operative physical property of respondent, as of June 30, 1912, is the sum of \$389,843.23; (2) that the present value of the operative physical property of respondent, as of June 30, 1912, is the sum of \$333,920.94.

*F. J. Solinsky and F. G. Athearn*, for the Amador Central Railroad Company.

## REPORT OF THE COMMISSION.

## OPINION AND FINDINGS.

*ESHLEMAN, Commissioner.*

This proceeding was brought on the Commission's initiative for the purpose of ascertaining various elements entering into the value of the property of the Amador Central Railroad Company. For the general procedure in these so-called railroad valuation cases and for a general description of the nature of the work performed by this Commission's engineering department in connection therewith, reference is hereby made to this Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of Stockton Terminal and Eastern Railway Company. As in that case, so here also I shall make findings of fact and shall not make a finding on the question of the value of the property irrespective of the purposes for which the value is ascertained.

The terms "reproduction value" and "present value" as used by the Commission are defined in said opinion and findings in Case No. 206. As directed by the Commission, the Amador Central Railroad Company filed with the Commission the inventory of its physical property and the estimated reproduction and present value thereof. The final summary sheet of this inventory is attached to this opinion and marked "Exhibit A."

The original cost of the property was not furnished by the company for the reason that cost records had been destroyed in the San Francisco fire in 1906.

The Commission's engineering department made a detailed examination of the property on the ground and based upon the facts ascertained, together with the inventory submitted by the company, arrived at estimates of the reproduction value and present value of the operative physical property as of June 30, 1912, which estimates are contained in a report filed with the Commission dated April 29, 1912.

A hearing was held before the Commission in this proceeding on February 3, 1913, which hearing was adjourned and subsequently reset before the Commission on April 25, 1913. At the latter hearing the company was represented by F. J. Solinsky, president, and F. G. Athearn, attorney.

With the notice of the first hearing, the company was furnished a copy of the report of the engineering department. In checking up this report it was discovered that the engineer having charge of the original construction of the railroad had still in his possession certain books and cost records which gave accurately certain quantities of construction, including grading, bridging, etc. These facts having been discovered were furnished the engineering department of the Commission, and based upon same an amended report was filed with the Commission of date April 21, 1913, in which the reproduction value and present value contained in the previous report were amended and corrected in accordance with actual cost data which had been found. A copy of the summary sheet accompanying this amended report is hereto attached and marked "Exhibit B."

At the hearing on April 25, 1913, representatives of the company appearing stated that the amended report filed by the Commission's engineering department represented the fair and reasonable reproduction value and present value of the operative physical property owned by the company as of date June 30, 1912, and that same, as presented, is entirely satisfactory to the Company.

In view of these statements and based upon the amended report filed by the engineering department of the Commission, I therefore find as a fact that the reproduction value, as that term has heretofore been defined, of the operative physical property of the Amador Central Railroad Company, as of June 30, 1912, is the sum of \$389,843.23.

I further find as a fact that the present value, as that term is heretofore defined by the Commission, of the operative physical property of the Amador Central Railroad Company, as of June 30, 1912, is the sum of \$333,920.94.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of May, 1913.

## EXHIBIT "A."

Name of owner, Amador Central Railroad; operating company, same; from Ione to Martell; miles main line track, 12, miles yard tracks, etc., 1,661; total, 13,661 miles.

| Class No. | Form No. | I. C. C. Act No. | Classes.  | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|------------------|---|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2                | Right of way and station grounds.....                                 |                | \$10,263 50         |                 | \$10,263 50    |
| 2         | 2        | 3                | Real estate .....   |                | 150 00              |                 | 300 00         |
| 3         | 3        | 4                | Grading .....   |                | 140,455 17          |                 | 140,455 17     |
| 4         | 4        | 5                | Tunnels .....   |                |                     |                 |                |
| 5         | 5        | 6                | Steel bridges and trusses.....  |                | 30,433 90           | 80              | 24,347 11      |
| 6         | 6        | 6                | Pile and frame trestles.....  |                | 3,053 64            | 60-100          | 2,282 36       |
| 7         | 7        | 6                | Culverts .....  |                | 24,724 69           | 90              | 22,252 14      |
| 8         | 8        | 7                | Ties .....  |                | 51,556 85           | 86              | 44,682 61      |
| 9         | 9        | 8                | Rails .....   |                | 2,760 00            | 85              | 2,346 00       |
| 10        | 10       | 9                | Frogs and switches.....   |                | 10,122 51           | 85              | 8,604 12       |
| 11        | 11       | 10               | Track fastenings and other material.....                              |                | 8,652 00            | 100             | 8,652 00       |
| 12        | 12       | 11               | Ballast .....   |                | 10,109 15           | 100             | 10,109 15      |
| 13        | 13       | 12               | Tracklaying and surfacing.....  |                | 531 30              | 70              | 371 91         |
| 14        | 14       | 13               | Roadway tools .....   |                | 5,039 28            | 90              | 5,345 35       |
| 15        | 15       | 14               | Fencing right of way.....   |                | 76 00               | 70              | 53 20          |
| 16        | 16       | 15               | Crossings and signs.....  |                |                     |                 |                |
| 17        | 17       | 16               | Interlocking plants .....   |                |                     |                 |                |
| 18        | 18       | 16               | Signal apparatus .....  |                | 872 50              | 90              | 785 25         |
| 19        | 19       | 17               | Telegraph and telephone lines.....                                    |                | 8,861 20            | 85              | 7,744 98       |
| 20        | 20       | 18               | Station buildings and fixtures.....                                   |                | 877 60              | 90              | 789 84         |
| 21        | 21       | 18               | Platforms, walks, paving and curb.....                                |                |                     |                 |                |
| 22        | 22       | 19               | General office buildings and fixtures.....                            |                |                     |                 |                |
| 23        | 23       | 20               | Shop buildings and engine houses.....                                 |                | 1,390 00            | 80-100          | 1,130 00       |
| 24        | 24       | 20               | Transfer and turntables, cinder pits, etc.....                        |                | 7,098 50            | 87              | 6,168 72       |
| 25        | 25       | 20               | Miscellaneous shop buildings and structures.....                      |                | 1,620 00            | 90              | 1,458 00       |
| 26        | 26       | 21               | Shop machinery and tools.....   |                | 1,750 00            | 80              | 1,400 00       |
| 27        | 27       | 22               | Water stations .....  |                | 1,250 00            | 60-100          | 1,050 00       |
| 28        | 28       | 23               | Fuel stations .....   |                |                     |                 |                |
| 29        | 29       | 24               | Grain elevators .....   |                |                     |                 |                |
| 30        | 30       | 25               | Storage warehouses .....  |                |                     |                 |                |
| 31        | 31       | 26               | Dock and wharf property.....  |                |                     |                 |                |
| 32        | 32       | 27               | Electric light plants.....  |                |                     |                 |                |
| 33        | 33       | 28               | Electric power plants.....  |                |                     |                 |                |
| 34        | 34       | 29               | Electric power transmission.....                                      |                |                     |                 |                |
| 35        | 35       | 30               | Gas producing plants.....   |                |                     |                 |                |
| 36        | 36       | 31               | Miscellaneous structures .....  |                | 11,719 20           | 86              | 10,270 39      |
| 37        | ---      | 1                | Total classes 1 to 36, inclusive.....                                 |                | \$334,179 90        |                 | \$310,881 90   |
| 38        | 37       | 32               | Engineering, 3 per cent, 1 to 36, inclusive.....                      |                | 10,025 40           |                 | 9,326 45       |
| 39        | 38       | 33               | Transportation of men and material.....                               |                |                     |                 |                |
| 40        | 38       | 34               | Rent of equipment.....  |                |                     |                 |                |
| 41        | ---      | 35               | Repairs of equipment.....   |                |                     |                 |                |
| 42        | ---      | 35               | Earning and operating expenses during construction.....               |                |                     |                 |                |
| 43        | ---      | 36               | Injuries to persons.....  |                |                     |                 |                |
| 44        | 39       | 37               | Cost of road purchased.....   |                |                     |                 |                |
| 45        | ---      | 38               | Total classes 1 to 43, inclusive.....                                 |                | \$344,205 30        |                 | \$320,208 25   |
| 46        | 40       | 39               | Steam locomotives .....   |                | 25,470 00           |                 | 21,500 00      |
| 47        | 41       | 40               | Electric locomotives .....  |                |                     |                 |                |
| 48        | 42       | 41               | Passenger train cars.....   |                | 4,750 00            | 100             | 4,750 00       |
| 49        | 43       | 42               | Freight train cars.....   |                | 3,000 00            | 60              | 2,400 00       |
| 50        | ---      | 43               | Work equipment .....  |                | 1,350 00            | 77              | 1,050 00       |
| 51        | 44       | 44               | Special stage .....   |                | 10,115 00           | 100             | 10,115 00      |
| 52        | 44       | 45               | Total classes 1 to 49, inclusive.....                                 |                | \$388,890 30        |                 | \$360,023 25   |
| 53        | 45       | 46               | Law expenses, $\frac{1}{2}$ per cent, classes 1 to 36, inclusive..... |                | 1,670 90            |                 | 1,634 41       |
| 54        | ---      | 47               | Stationery and printing.....  |                |                     |                 |                |
| 55        | 45       | 48               | Insurance .....   |                |                     |                 |                |
| 56        | ---      | 48               | Taxes .....   |                |                     |                 |                |
| 57        | 46       | ---              | Total classes 1 to 53, inclusive.....                                 |                | \$390,561 20        |                 | \$361,577 66   |
| 58        | ---      | 49               | Interest and commission, 5 per cent, classes 1 to 53, inclusive.....  |                | 19,528 06           |                 | 18,078 88      |
| 59        | ---      | 50               | Other expenditures .....  |                | 3,905 01            |                 | 3,615 77       |
| 60        | ---      | 51               | Contingencies, 5 per cent, classes 1 to 53, inclusive.....            |                | 19,528 06           |                 | 18,078 88      |
| 61        | ---      | 52               | Stores and supplies on hand for use in California.....                |                | 3,278 65            |                 | 3,278 65       |
| 62        | ---      | 53               | Grand total .....   |                | \$436,801 50        |                 | \$404,629 84   |



## EXHIBIT "B."

Name of owner, Amador Central Railroad; operating company, same; from Ione to Martell; miles main line track, 11.81; miles yard tracks, etc., 2.48; total, 14.32 miles.

Valuation as of June 30, 1912; Richard Sachse, field inspector and office compiler. Date compiled, April 3, 1913.

| Class No. | Form No. | I. C. G. No. | Classes.   | Original cost. | Reproduction value. | Cond. per cent. | Present value. |
|-----------|----------|--------------|--|----------------|---------------------|-----------------|----------------|
| 1         | 1        | 2            | Right of way and station grounds                                 |                | \$10,817 59         | 100             | \$10,817 59    |
| 2         | 2        | 3            | Real estate  |                | 75 00               | 100             | 75 00          |
| 3         | 3        | 4            | Grading  |                | 95,642 36           |                 | 101,580 29     |
| 4         | 4        | 5            | Tunnels  |                |                     |                 |                |
| 5         | 5        | 6            | Steel bridges and trusses  |                |                     |                 |                |
| 6         | 6        | 6            | Pile and frame trestles  |                | 32,892 00           | 55              | 18,110 06      |
| 7         | 7        | 6            | Culverts   |                | 2,524 27            | 59              | 1,521 98       |
| 8         | 8        | 7            | Ties   |                | 25,350 10           | 50              | 12,675 06      |
| 9         | 9        | 8            | Rails  |                | 40,548 82           | 80              | 32,641 80      |
| 10        | 10       | 9            | Frogs and switches   |                | 2,005 15            | 67              | 1,338 02       |
| 11        | 11       | 10           | Track fastenings and other material                              |                | 17,622 18           | 79              | 13,837 90      |
| 12        | 12       | 11           | Ballast  |                | 5,844 30            | 100             | 5,844 30       |
| 13        | 13       | 12           | Tracklaying and surfacing  |                | 14,179 50           | 73              | 10,351 08      |
| 14        | 14       | 13           | Roadway tools  |                | 1,203 30            | 87              | 1,045 81       |
| 15        | 15       | 14           | Fencing right of way   |                | 5,997 80            | 73              | 4,398 39       |
| 16        | 16       | 15           | Crossings and signs  |                | 52 00               | 50              | 26 00          |
| 17        | 17       | 16           | Interlocking plants  |                |                     |                 |                |
| 18        | 18       | 16           | Signal apparatus   |                |                     |                 |                |
| 19        | 19       | 17           | Telegraph and telephone lines                                    |                | 627 20              | 67              | 420 22         |
| 20        | 20       | 18           | Station buildings and fixtures                                   |                | 8,565 00            | 80              | 6,852 00       |
| 21        | 21       | 18           | Platforms, walks, paving and curb                                |                | 1,582 80            | 80              | 1,266 24       |
| 22        | 22       | 19           | General office buildings and fixtures                            |                |                     |                 |                |
| 23        | 23       | 20           | Shop buildings and engine houses                                 |                | 2,533 41            | 80              | 2,026 72       |
| 24        | 24       | 20           | Transfer and turntables, cinder pits, etc.                       |                | 1,300 00            | 79              | 1,025 00       |
| 25        | 25       | 20           | Miscellaneous shop buildings and structures                      |                | 6,049 30            | 80              | 4,839 44       |
| 26        | 26       | 21           | Shop machinery and tools   |                | 1,965 00            | 75              | 1,473 75       |
| 27        | 27       | 22           | Water stations   |                | 1,521 60            | 70              | 1,065 12       |
| 28        | 28       | 23           | Fuel stations  |                | 1,041 96            | 90              | 937 76         |
| 29        | 29       | 24           | Grain elevators  |                |                     |                 |                |
| 30        | 30       | 25           | Storage warehouses   |                |                     |                 |                |
| 31        | 31       | 26           | Dock and wharf property  |                |                     |                 |                |
| 32        | 32       | 27           | Electric light plants  |                |                     |                 |                |
| 33        | 33       | 28           | Electric power plants  |                |                     |                 |                |
| 34        | 34       | 29           | Electric power transmission                                      |                |                     |                 |                |
| 35        | 35       | 30           | Gas producing plants   |                |                     |                 |                |
| 36        | 36       | 31           | Miscellaneous structures   |                | 15,708 10           | 86              | 13,492 98      |
| 37        | ---      | 1            | Total classes 1 to 36, inclusive.                                |                | \$295,559 64        |                 | \$247,661 85   |
| 38        | 37       | 32           | Engineering, 5 per cent, 1 to 36, inclusive.                     |                | 14,777 98           | 100             | 14,777 98      |
| 39        | 38       | 33           | Transportation of men and material                               |                |                     |                 |                |
| 40        | 38       | 34           | Rent of equipment  |                |                     |                 |                |
| 41        | ---      | 35           | Repairs of equipment   |                |                     |                 |                |
| 42        | ---      | 35           | Earning and operating expenses during construction               |                |                     |                 |                |
| 43        | ---      | 36           | Injuries to persons  |                |                     |                 |                |
| 44        | 39       | 37           | Cost of road purchased   |                |                     |                 |                |
| 45        | ---      | 38           | Total classes 1 to 43, inclusive.                                |                | \$310,337 62        |                 | \$262,439 88   |
| 46        | 40       | 39           | Steam locomotives  | \$17,000 00    | 17,000 00           | 75              | 12,730 00      |
| 47        | 41       | 40           | Electric locomotives   |                |                     |                 |                |
| 48        | 42       | 41           | Passenger train cars   | 4,750 00       | 4,975 00            | 79              | 3,912 00       |
| 49        | 43       | 42           | Freight train cars   | 4,200 00       | 5,040 00            | 65              | 3,297 00       |
| 50        | ---      | 43           | Work equipment   |                |                     |                 |                |
| 51        | 44       | 44           | Stage equipment  |                | 9,890 00            | 90              | 8,941 50       |
| 52        | 44       | 45           | Total classes 1 to 49, inclusive.                                |                | \$347,242 62        |                 | \$291,320 33   |
| 53        | 45       | 46           | Law expenses, 11 per cent, classes 1 to 36, inclusive            |                | 3,472 42            |                 | 3,472 42       |
| 54        | ---      | 47           | Stationery and printing  |                |                     |                 |                |
| 55        | 45       | 48           | Insurance  |                |                     |                 |                |
| 56        | ---      | 49           | Taxes  |                |                     |                 |                |
| 57        | 46       | ---          | Total classes 1 to 53, inclusive.                                |                | \$350,715 04        |                 | \$249,792 75   |
| 58        | ---      | 50           | Interest and commission, 3 per cent, classes 1 to 53, inclusive. |                | 10,521 45           |                 | 10,521 45      |
| 59        | ---      | 51           | Other expenditures   |                |                     |                 |                |
| 60        | ---      | 52           | Contingencies, 5 per cent, classes 1 to 53, inclusive            |                | 17,535 76           |                 | 17,535 76      |
| 61        | ---      | 53           | Stores and supplies on hand for use in California                |                | 11,070 98           |                 | 11,070 98      |
| 62        | ---      | 54           | Grand total  |                | \$389,843 23        |                 | \$333,920 94   |
| 63        | ---      | 55           | Average per mile for main line track                             |                | 32,925 95           |                 | 28,202 78      |

Decisions Nos. 648, 649, 650, 651 and 652, grade crossings; not printed. See end of volume.

DECISION No. 653.

IN THE MATTER OF THE APPLICATION OF THE MONTEREY COUNTY WATER WORKS FOR PERMISSION TO CONTRACT WITH CITY OF MONTEREY TO INSTALL CERTAIN WATER MAINS AND HYDRANTS IN SAID CITY OF MONTEREY, AND THAT THE COMPENSATION OR RATES THEREFORE BE FIXED, AND FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

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Application No. 531.

*Decided May 8, 1913.*

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ORDER OF DISMISSAL.

REPORT OF THE COMMISSION.

Applicant in this proceeding having on May 5, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 8th day of May, 1913.

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DECISION No. 654.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES GAS AND ELECTRIC CORPORATION FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED TO IT BY ORDINANCE NO. 71, N. S., OF THE CITY OF EAGLE ROCK.

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Application No. 542.

*Decided May 8, 1913.*

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REPORT OF THE COMMISSION.

Los Angeles Gas and Electric Corporation having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the city of Eagle Rock, in its Ordinance No. 71, N. S., adopted

March 10, 1913, by which ordinance applicant is given the right to construct and maintain a system of gas pipes in and along all the public streets of the city of Eagle Rock, and Southern California Gas Company, which is also operating in the city of Eagle Rock, having filed with the Commission its written consent to the granting of this application, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by the Los Angeles Gas and Electric Corporation of the rights and privileges granted to said corporation by the city of Eagle Rock, in its Ordinance No. 71, N. S.

By order of the Railroad Commission.

Dated at San Francisco, California, this 8th day of May, 1913.

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DECISION No. 655.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES  
GAS AND ELECTRIC CORPORATION FOR A CERTIFICATE  
THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE  
THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED  
TO IT BY ORDINANCE NO. 158 OF THE CITY OF WATTS.

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Application No. 543.

*Decided May 8, 1913.*

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REPORT OF THE COMMISSION.

Los Angeles Gas and Electric Corporation having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the city of Watts, in its Ordinance No. 158, adopted April 29, 1913, by which ordinance applicant is given the right to construct and maintain a system of gas pipes in and along all the public streets of the city of Watts, and it appearing that there is no other public utility of like character operating in the city of Watts, and the Commission being of the opinion that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by the Los Angeles Gas and Electric Corporation of the rights and privileges granted to said corporation by the city of Watts, in its Ordinance No. 158.

By order of the Railroad Commission.

Dated at San Francisco, California, this 8th day of May, 1913.

## DECISION No. 656.

SCOTT, MAGNER &amp; MILLER ET AL.

*vs.*

WESTERN PACIFIC RAILWAY COMPANY.

Case No. 283.

*Decided May 8, 1913.*

## ORDER OF DISMISSAL.

## REPORT OF THE COMMISSION.

Complainants in this proceeding having on May 6, 1913, made written request that the complaint in the above entitled proceeding be dismissed,

*It is hereby ordered* that the complaints in the above entitled proceeding be and the same hereby are dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 8th day of May 1913.

## DECISION No. 657.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED TO IT BY ORDINANCE NO. 110 OF THE BOARD OF SUPERVISORS OF KERN COUNTY, CALIFORNIA.

Application No. 524.

*Decided May 8, 1913.*

## REPORT OF THE COMMISSION.

Southern Sierras Power Company having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the board of supervisors of Kern County, in Ordinance No. 110, adopted February 11, 1913, by which ordinance applicant is given the right to construct, operate and maintain an electrical system in certain portions of Kern County, and it appearing that there is no other public utility of like character operating in the portions of Kern County specified in said ordinance, and the Commission being of the opinion that this is not an application in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by Southern Sierras Power Company of the rights and privileges granted to said company by the board of supervisors of Kern County, in Ordinance No. 110.

By order of the Railroad Commission.

Dated at San Francisco, California, this 8th day of May, 1913.

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DECISION No. 658.

IN THE MATTER OF THE APPLICATION OF MAILLIARD  
ESTATE FOR PERMISSION TO SELL, AND OF LAGUNITAS  
DEVELOPMENT COMPANY TO BUY CERTAIN PROPERTY.

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Application No. 549.

*Decided May 8, 1913.*

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An estate owning certain realty and being engaged in operating a water system as a public utility on part of said property is given permission to transfer its entire realty holdings, subject to the condition that the price paid for the property or any portion thereof shall not be taken before the Commission or any other public body as representing, for rate fixing or other purposes, the value of the property transferred.

REPORT OF THE COMMISSION.

The Mailliard Estate is now the owner of certain property in and about the towns of Lagunitas and San Geronimo, Marin County, California, which property is generally referred to as the Rancho San Geronimo and comprises 6,100 acres more or less. A considerable portion of the Rancho San Geronimo as it originally existed has been sold by Mailliard Estate and its predecessors in interest to various purchasers, which purchasers are at present receiving water from a system operated by the Mailliard Estate upon that portion of the Rancho San Geronimo which was retained by the Mailliard Estate.

The Mailliard Estate now desires to sell to the Lagunitas Development Company for the sum of \$220,000, practically all of the property now owned by it in Marin County. The presence of the small water system already referred to, and which is included in this transfer, makes it necessary that the consent of this Commission be obtained before the transfer is consummated. The transfer is to be made in accordance with the deed attached to the application in this proceeding and marked Exhibit "B." This deed gives a complete description of the property to be transferred.

To secure the payment by the Lagunitas Development Company of two promissory notes of the amounts respectively of \$50,000 and

\$120,000, which are to be given in part payment for the property transferred, the Lagunitas Development Company is to execute a mortgage to the Mailliard Estate of the property which is to be transferred. This mortgage is to be executed in accordance with the mortgage deed attached to the application in this proceeding and marked Exhibit "C." The Commission being of the opinion that this application should be granted,

*It is hereby ordered* that the Mailliard Estate be and it hereby is authorized to sell for the sum of \$220,000, in accordance with the terms of the indenture attached to the application in this proceeding and marked Exhibit "B," the property now owned by it in and about Lagunitas and San Geronimo in Marin County, and more particularly described in said indenture, and that Lagunitas Development Company be and it hereby is authorized to purchase said property in accordance with the provisions of said indenture; and

*It is further ordered* that Lagunitas Development Company be and it hereby is authorized to execute a mortgage covering the property herein authorized to be transferred, said mortgage to be executed in accordance with the mortgage attached to the application in this proceeding and marked Exhibit "C."

The authority herein granted is granted subject to the condition that the price paid for the property or any portion thereof herein authorized to be transferred shall not be taken before this Commission or any other public body as representing for rate fixing or other purposes, the value of the property transferred.

By order of the Railroad Commission.

Dated at San Francisco, California, this 8th day of May, 1913.

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DECISION No. 659.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
COUNTIES GAS COMPANY TO FIX A RATE IN THE CITY  
OF ORANGE, COUNTY OF ORANGE, AT WHICH GAS MAY  
BE SOLD FOR LIGHTING AND HEATING PURPOSES.

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Application No. 380.

*Decided May 9, 1913.*

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From gas works located in Santa Ana, applicant supplies manufactured gas to the residents of said city, and by means of a high pressure system transmits and supplies gas also to residents of the neighboring cities of Orange, Anaheim and Fullerton. Of the total gas sales, 63 per cent is sold in Santa Ana, 12.5 per cent in Orange, 14.2 per cent in Anaheim and 10.3 per cent in Fullerton. On Novem-

ber 12, 1912, the voters of Orange surrendered their powers of control over gas corporations to the Commission, having previously fixed \$1.15 per thousand as the gas rate, whereupon applicant petitioned the Commission to establish \$1.35 per thousand as the just and reasonable rate to be charged.

In considering the value of applicant's property, as one of the elements entering into rate fixing, method followed of prorating property generally used by the several communities on the percentage of gas used, and it was agreed, with reference particularly to the transmission system, that each unit of a system should bear that proportionate cost of the extension of the system to other consumers which the saving to such portion of the system represents.

The entire cost of delivering gas in Orange was given by applicant to be 91.3 cents. This figure, however, was found not to include a sufficient allowance for depreciation.

*Held*, Assuming that the amount, to wit, 91.3 cents, set out by the company, did properly represent the entire cost, having regard to all the necessary items, of delivering gas to Orange, the entire cost to the company during the year 1912 would be \$9,067.91, while it received a gross compensation for such delivery of \$11,839.53, leaving a balance of \$2,771.62, which is \$30.00 in excess of 7 per cent on the valuation of the property found by the Commission's engineer. During the last six months of 1912, the \$1.15 rate was in effect and the records show that the average during such six months was about the average for the year, and, hence, the \$1.15 rate under present conditions would yield a reasonable return to the company, but the Commission has no disposition to consider technicalities which prevent a just determination of a case, and it is certainly proper that an allowance be made to applicant in its rates to take care of depreciation.

Taking into consideration a probable reasonable increase of consumption of from 10 to 20 per cent in the city of Orange, and a necessary deduction from the amount of property used in the high pressure system to be charged against the city of Santa Ana, some increase in rate over the \$1.15 now in effect should be made to take care of depreciation. In reaching this conclusion, attention is called to the fact that the present value of the property, so-called, as found by the engineers, is only one of the several elements which may properly be considered by the Commission in the rate fixing inquiry. (Cases cited.)

*Held*, After a careful consideration of all the evidence, a rate of \$1.22 is a proper rate to be charged by applicant in the city of Orange. It is not to be understood that this rate is to be taken as a measure of the proper rate in the other cities served from this system, but taking into consideration the value of the property as apportioned to the city, the cost of producing the gas, the necessary depreciation and the probability of added consumers being secured, we believe that this is a proper rate.

Said rate of \$1.22 per thousand cubic feet established as the just and reasonable rate to be charged and applicant directed to set aside from income, as a depreciation fund, for the first year, for its plant used for the service of its consumers in the city of Orange, not less than \$1,200 to be invested or disposed of in a way hereafter to be determined by the Commission.

*W. N. Goodwin and Hunsaker & Britt*, for Applicant.

*W. M. Brown*, city attorney, for the City of Orange.

#### REPORT OF THE COMMISSION.

*ESHLEMAN AND LOVELAND, Commissioners.*

The applicant is a public utility gas corporation, serving the cities of Santa Ana, Orange, Anaheim and Fullerton, in the county of Orange. It has a rate in Santa Ana of \$1.00 per thousand cubic feet and a rate of \$1.25 in Fullerton and Anaheim, but the city authorities of the city of Orange fixed a rate of \$1.15 per thousand cubic feet for gas to be delivered in that city.

On the 2d day of October, 1912, the gas company brought an action in the superior court of Orange County, contesting the ordinance fixing \$1.15 as the rate for gas in Orange, which action is still pending. On the 12th day of November, 1912, at an election duly and regularly held, the voters of the city of Orange surrendered their power of control over gas corporations to this Commission, and on the 27th of January, 1913, this application was filed.

It is set out in the petition that between the 1st day of July, 1912, and the 1st day of January, 1913, the gas company, applicant herein, sold to the inhabitants of the city of Orange 5,182,000 cubic feet of gas, and that the actual cost of manufacturing such gas was 91.3 cents per thousand cubic feet or \$4,731.16 and that under the \$1.15 rate the company received therefor \$6,055.38.

It is alleged that the reasonable value of the property necessary in the delivery of gas to the city of Orange, and owned by applicant, is \$48,273.07, and in order to furnish a return upon such amount and to take care of the other necessary charges, the applicant desires that a rate of \$1.35 per thousand cubic feet be fixed.

The company, in addition to its Orange County plant, has a plant at Whittier serving Whittier, one at Monrovia serving Monrovia, and by high pressure system the towns of Sierra Madre, Arcadia, South Santa Anita and El Monte, and one at Covina serving Covina and by high pressure the towns of Azusa, Glendora, San Gabriel and unincorporated territory contiguous thereto. Inasmuch as these plants are entirely separate from the Orange County plants it will not be necessary to consider them further in this proceeding, except as regards general office furniture and fixtures, and certain general overhead expenses which are incurred for the benefit of all of the business of the company.

The Orange plant which is directly involved in this application was first operated as a separate company with a generating plant at Orange, which has since been abandoned. It is in evidence that the service under the former management was poor, and that the service at present is good. Since consolidation the system in Orange County consists of the Santa Ana plant and a high pressure line serving Orange, Anaheim, and Fullerton. Of the total amount of gas furnished approximately 63 per cent is being used in Santa Ana, 12.5 per cent in Orange, 14.2 per cent in Anaheim and 10.3 per cent in Fullerton.

Mr. A. R. Kelley, assistant engineer of the Commission, made a valuation of the system for the Commission. He followed the usual method of prorating jointly used property on the percentage of gas used. The general office furniture and fixtures were prorated among the various general districts on the basis of the total amount of gas generated. To that part charged to Santa Ana district was added the



value of the Santa Ana office. The per cent of this amount charged to Orange was the same as the percentage of gas sold in Orange was of the total amount sold in the whole Santa Ana district during the year 1912. The same percentage was used in the accounts covering gas plant, land, general equipment, tools, implements and laboratory equipment. For the reason that the high pressure transmission main supplying Orange, Anaheim, and Fullerton is used by about sixty consumers in Santa Ana that portion of the main lying between the generating station and the Santa Ana River was prorated among the three towns and the sixty consumers. The remaining portion serving exclusively the three towns was prorated among them on the basis of gas sold. The proper method of prorating the high pressure system between the various towns served was the main question in issue between the gas company and the city of Orange. Mr. Kelley, in his recommendation to the Commission, takes the view that it is fair to consider these towns as parts of the whole system and to prorate the property necessary to serve the consumers from the high pressure system on the basis of the amount of gas sold, by reason of the fact that each one of these towns may be more economically and efficiently served because of the economy made possible by the larger system and the larger amount of gas produced.

It was agreed by both the attorney for the applicant and the city attorney of Orange that each unit of a system should bear that proportionate cost of the extension of the system to other consumers which the saving to such portion of the system represents. In other words, suppose that we had a gas generating plant and distribution system in Santa Ana alone. If by reasonably extending the system to Orange, Anaheim, and Fullerton and the attendant increase in the amount of gas sold, the cost per unit of gas in Santa Ana to be delivered to the consumers should be decreased, then a portion of the cost of the added system can be properly added to the cost of the Santa Ana plant, and while the interest upon the value of the plant would be increased to Santa Ana consumers, yet there would be a corresponding reduction in the cost of operation, and so long as the reduction in the cost of operation equalled the increase in the interest charged on the investment, the consumers in Santa Ana would have no right to complain. In justice, however, it might be proper to accord them some benefit from the extension not offset by an interest charge on value of additional property necessary in the extension of the system.

On the basis used by Mr. Kelley the high pressure system should be divided as follows:

- 4.8 to Santa Ana representing the sixty Santa Ana consumers taking from the high pressure system,
- 32.3 to Orange,

36.4 to Anaheim, and  
26.5 to Fullerton.

By reason of the principle just discussed it will be seen that while this represents a fair apportionment between the consumers from the high pressure system when considered alone, yet there should be that reduction from these percentages which the saving to the Santa Ana consumers justifies, and the valuation found by the engineers of the Commission admittedly do not take this matter into consideration, and therefore by so much are excessive as regards the high pressure patrons.

On the basis used Mr. Kelley presented to the Commission a cost of reproduction of the system new totalling \$45,850; a present value of reproducing the system new with the amount of depreciation which is found to exist in it deducted therefrom of \$39,150. The company's estimate, as has already been pointed out, amounts to \$48,273.07. The difference between the company's engineers and the engineers of the Commission is mainly due to errors in book accounts and failure to take into consideration depreciation.

The receipts from the sale of gas for the year 1912 to the city of Orange amount to \$11,839.53, and the total amount of gas sold was 9,932,400 cubic feet. According to the petition it costs the company 91.3 cents per thousand cubic feet to manufacture and deliver a thousand cubic feet of gas to the consumers in Orange.

While the Commission would have a right to assume the correctness as against the company, of this statement and to conclude that the sum of 91.3 cents per thousand cubic feet set up in the petition by the applicant as being the cost of delivering gas to Orange, represents the entire cost, yet a careful inspection of the books of the company shows that 91.3 cents per thousand cubic feet does not take into consideration a sufficient allowance for depreciation. Assuming that the amount set out by the company did properly represent the entire cost, having regard to all the necessary items of delivering gas to Orange, the entire cost to the company during the year 1912, would be \$9,067.91, while it received a gross compensation for such delivery of \$11,839.53, leaving a balance of \$2,771.62, which is \$30 in excess of 7 per cent on the valuation of the property found by Mr. Kelley. During the last six months of 1912, the \$1.15 rate was in effect and the records show that the average during such six months was about the average for the year, and hence we would be justified in concluding that the \$1.15 rate under present conditions would yield a reasonable return to this company, but this Commission has no disposition to consider technicalities which prevent a just determination of a case, and it is certainly proper that an allowance be made to this company in its rates to take care of depreciation.

In addition to the benefits to Santa Ana arising from the construction of the high pressure system to these other towns which has not been taken into consideration in favor of these towns and against Santa Ana which should have some place in a determination of this case, we also find another matter which should have an effect upon the rates in Orange. The distributing mains of this system already extend to all parts of the city and in many instances extensions have been made where there was very little business in sight. It is also noticeable that many houses are not using gas, which, according to the testimony have the appearance of being good prospects. The result of all this is that the number of feet of main per consumer in the city of Orange is considerably larger than in other cities of similar size. It is well established that a higher rate may not be charged to a few consumers when a system is so constructed that it could serve many more at slightly additional cost. It is the testimony of the engineer for the Commission that in his opinion the number of consumers in Orange could be substantially increased, and it is in evidence that a ten per cent increase has been brought about in the past year, and Mr. Kelley testifies that an increase between that and twenty per cent may be expected by careful canvass. However, this is an estimate, but the Commission is of the opinion that this company should make added efforts to increase the number of its consumers and the amount of gas sold in Orange, thereby obviating the necessity of a greatly increased rate.

Taking into consideration a probable reasonable increase of consumption of from ten to twenty per cent in the city of Orange and a necessary deduction from the amount of property used in the high pressure system to be charged against the city of Santa Ana, we still are of the opinion that some increase in rate over the \$1.15 now in effect should be made to take care of depreciation. In reaching this conclusion we call attention to the fact that the present value of the property, so-called, as found by the engineers is only one of several elements which may properly be considered by the Commission in a rate fixing inquiry.

*Smythe vs. Amcs*, 169 U. S. 466;

*San Diego Land & Town Co. vs. Jasper*, 189 U. S. 439;

*Knoxville vs. Knoxville Water Co.*, 212 U. S. 1;

*Wilcox vs. Consolidated Gas Co.*, 212 U. S. 19.

It is not proper to urge that the city authorities of Santa Ana have imposed a rate which is too low as affecting the rate in Orange. Concerning this matter we have no information, but if such were the fact it would make absolutely no difference with a proper determination of a rate for the city of Orange. A mere statement of this principle is sufficient, as it is well recognized and thoroughly established.

A comparison of the gas rates in various cities of the state show that the rates prevailing in Orange County under the system of applicant are, comparatively speaking, not high. The Commission after a careful and exhaustive investigation, reduced the rate for gas in the city of Palo Alto from \$1.50 to \$1.20. While no two communities can be properly compared, yet Palo Alto is a considerably larger city than Orange, and there are certain other considerations in favor of more economical distribution there than in territory served by applicant. On the other hand, the Palo Alto company secures its gas at wholesale from another company and did not manufacture it itself. The larger cities have a rate considerably lower, but as has already been said, the rates of applicant in this territory compare favorably with the rates existing under similar systems elsewhere.

After a careful consideration of all the evidence we are of the opinion that a rate of \$1.22 is a proper rate to be charged by applicant in the city of Orange. It is not to be understood that this rate is to be taken as a measure of the proper rate in the other cities served from this system, but taking into consideration the value of the property as apportioned to this city, the cost of producing the gas, the necessary depreciation and the probability of added consumers being secured, we believe that this is a proper rate.

While we believe this conclusion is justified at the present time, if, however, conditions change either in favor of or against the applicant, this Commission will again, when the matter is brought to its attention, revise the rates as the facts at such time may warrant.

We submit the following order:

**ORDER.**

Southern Counties Gas Company having applied to this Commission for an order fixing the rates to be charged by it to its consumers in the city of Orange, county of Orange, State of California, and a hearing having been held and being fully apprised in the premises,

The Commission hereby finds as a fact that a rate of \$1.22 per thousand cubic feet is a proper rate to be charged by the applicant to its consumers in the city of Orange, and basing its order on this finding of fact and the findings of fact in the opinion,

*It is hereby ordered* that a rate of \$1.22 per thousand cubic feet is hereby established as a just and reasonable rate to be charged by the applicant herein to its consumers in the city of Orange.

*And it is further ordered* that the applicant set aside from income as a depreciation fund for the first year after this order for its plant used for the service of its consumers in the city of Orange not less than

\$1,200, said depreciation fund to be invested or disposed of in a way hereafter to be determined by this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of May, 1913.

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DECISION No. 660.

IN THE MATTER OF THE APPLICATION OF LAWNSDALE LAND AND WATER COMPANY TO PURCHASE THE WATER SYSTEM OF LAWNSDALE WATER COMPANY; TO ISSUE STOCK; TO MORTGAGE ITS PROPERTY; TO ISSUE BONDS; AND TO CHANGE ITS RATES FROM A FLAT BASIS TO A METER BASIS; AND OF LAWNSDALE WATER COMPANY TO SELL ITS WATER SYSTEM.

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Applications Nos. 370 and 426.

*Decided May 9, 1913.*

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Application by Lawnsdale Water Company to transfer its property to Lawnsdale Land and Water Company, and by latter company (1) to acquire same; (2) to issue \$150,000 capital stock in payment thereof; (3) to execute a mortgage securing \$50,000 of 6 per cent 20-year bonds; (4) to issue sufficient of said bonds to net cash proceeds of \$40,000 and to use said proceeds to discharge debts amounting to \$15,773.79 and to make extensions of its water system estimated to cost \$24,303.60; and (5) to change its method of charging from a flat rate basis to a meter basis. The transfer of said properties and the issue of said capital stock in fact had been made prior to the application in disregard of the provisions of the Public Utilities Act requiring the prior approval of the Commission. The purpose of application in part was to validate said transactions.

*Held.* The transfer of the properties should be permitted, being merely a transfer for convenience and the same parties being in control of each of the applicants.

*Held.* There would appear no reason why stock to the amount of \$150,000 should be issued by applicant and the authorization should not exceed \$75,000. This figure is not taken to represent the value of the properties, but it more closely approximates the value than does the sum of \$150,000, and it affords an easy basis of exchange. The present shareholders may, without inconvenience, surrender their stock and receive stock in return on the basis of one share for two.

*Held.* With respect to the purposes to which the proceeds of bonds are desired to be applied, it appearing that the indebtedness of \$15,773.79, excepting \$1,747 thereof represents in part deficit to cover which moneys were advanced, and in part items chargeable to operating expenses, and that \$2,000 of the amount estimated as necessary for betterments properly is chargeable to replacements, deductions should be made accordingly, leaving the net amount of said purposes \$24,050.60, to which should be added \$1,000 for additional extensions; total, \$25,050.60.

*Held.* Applicant may mortgage its property to secure an issue of \$50,000 bonds and may issue thereof at this time bonds in the face amount of \$25,000 to be sold at not less than 90 per cent of par.

*Held.* Applicant may substitute for its present flat rate of \$1.25 per month for a  $\frac{3}{4}$ -inch tap a schedule of rates as follows:

- I. Flat rate \$1.50 per month; or
- II. (a) \$1.25 for any part of the first 750 cubic feet, and 10 cents per 100 cubic feet for water in excess of 750 cubic feet.
- (b) Special Rate No. 1: To consumers who agree to pay a minimum monthly bill of \$2.00, 10 cents per 100 for first 1,000 cubic feet; 7½ cents per 100 cubic feet for any additional water used.
- (c) Special Rate No. 2: To consumers who agree to pay a minimum monthly bill of \$3.00, 7½ cents per 100 cubic feet for all water used.

*Held.* That meters be placed at the request of the consumer or at the option of the company, and that such meters and their placement be at the expense of the company, and that all service connections be made at the expense of the company.

*Bert Campbell and Hartley Shaw, for Lawndale Land and Water Company.*

*T. K. Kase, for water users.*

#### REPORT OF COMMISSION.

*LOVELAND, Commissioner.*

This is an application by Lawndale Land and Water Company for authority to purchase the water system of Lawndale Water Company; to issue \$1,500 shares of its capital stock of the par value of \$100 each; to mortgage its property to secure a bonded indebtedness; to issue sufficient bonds to raise \$40,000 to pay existing obligations and to provide for extensions of its water system; for authority to change from a flat rate basis to a meter basis; and by Lawndale Water Company to sell its water system to Lawndale Land and Water Company.

Lawndale Land and Water Company was incorporated on May 17th, 1912, nearly two months subsequent to the effective date of the Public Utilities Act. In the face of the Public Utilities Act, however, the company proceeded to take over by purchase the Lawndale Water Company and to issue its stock to the amount of \$150,000, consisting of 1,500 shares of the par value of \$100 each. The company thereafter proceeded to raise its rates. These acts were in violation of the provisions of the Public Utilities Act which require that a public utility must obtain the approval of the Railroad Commission for the purchase of another utility, for the issuance of its stock or for an increase in its rates. The attention of the Commission was called to the company's attempt to raise its rate by the water patrons. The Commission thereupon directed the Lawndale Land and Water Company to restore its previous rate and to make application to the Commission if it desired to change its rate schedule. The company thereafter applied for authority to change from a flat rate basis to a meter basis, for authority to issue bonds, and asked that the Commission issue an order validating its purchase of the Lawndale Water Company and its issue of stock.

Two distinct applications were made. At the hearing held in Los Angeles they were consolidated and will be considered together in this opinion.

Lawndale Land and Water Company is engaged in the business of distributing and selling water at Lawndale, a suburb of Los Angeles. It has 232 patrons. It has been serving them on a flat rate basis of \$1.25 per month.

As amended at the hearing, and as finally presented to the Commission for its consideration, the application of Lawndale Land and Water Company may be summarized as follows:

1. Application by Lawndale Water Company to sell its system and by Lawndale Land and Water Company to buy said system.

2. Application by Lawndale Land and Water Company to issue 1,500 shares of stock of the par value of \$100 each to Charles B. Hopper and A. H. MacFarland for the properties of Lawndale Water Company.

3. Application by Lawndale Land and Water Company for authority to mortgage its property to secure a bonded indebtedness.

4. Application by Lawndale Land and Water Company to issue bonds sufficient to raise \$40,000 to be issued under its mortgage and deed of trust to Los Angeles Title and Trust Company, dated July 1, 1912, providing for an issue of \$50,000 six per cent bonds maturing July 1, 1932.

5. Application by Lawndale Land and Water Company to change its rates from the present basis of a flat rate of \$1.25 per month for a  $\frac{3}{4}$ -inch tap to the following schedule:

(a) Minimum rate per month of \$1.25 for any part of the first 500 cubic feet, with an additional charge of 10 cents per 100 cubic feet for all additional water used in excess of 500 cubic feet.

(b) Special Rate No. 1: To consumers who agree to pay a minimum monthly bill of \$2.00, 10 cents per 100 for first 1,000 cubic feet;  $7\frac{1}{2}$  cents per 100 cubic feet for any additional water used.

(c) Special Rate No. 2: To consumers who agree to pay a minimum monthly bill of \$3.00,  $7\frac{1}{2}$  cents per 100 cubic feet for all water used.

There is also before the Commission in this matter the application of Lawndale Water Company to sell its properties to Lawndale Land and Water Company.

I shall consider first that feature of the application in which Lawndale Land and Water Company asks for authority to purchase, and Lawndale Water Company to sell, the water properties. The properties consist of a well and distributing system at Lawndale. The same parties who control Lawndale Water Company also control Lawndale Land and Water Company. The transfer was merely for convenience, and I see no reason why this part of the application should not be granted.

I shall consider next the question of rates. Lawndale Land and Water

Company has been operating on a flat rate basis of \$1.25 per month for  $\frac{3}{4}$ -inch tap. It has submitted a statement of earnings which shows clearly that the revenue from these rates has not been adequate. Applicant states that the rates which it desires to put into effect will not yield it an adequate return upon the value of its investment, but it states that it will be willing to proceed under those rates, satisfied that they will enable it to take care of its operating expenses and such other obligations as it must meet. A detailed engineering report was submitted by the applicant with the following estimates of value:

|                          |             |
|--------------------------|-------------|
| Original cost .....      | \$58,522 56 |
| Reproduction value ..... | 74,152 81   |
| Present value .....      | 67,375 58   |

During the past six years of operation of these water properties, Lawndale Land and Water Company and its predecessor, Lawndale Water Company, have accumulated a deficit of \$10,699.04.

In establishing a rate schedule applicable to the present situation, provision must be made for domestic service and for irrigation use. Many of the holdings in Lawndale are in acre and half-acre lots and the owners thereof are engaged in the business of truck gardening.

It has been repeatedly stated in decisions of this Commission that a meter basis is often to be preferred to a flat rate basis in the distribution of water. The applicant in this case has submitted estimates of its earnings, if allowed to put into effect the proposed rates, and has expressed its satisfaction with the returns to be derived therefrom.

At the hearing, Mr. Lathrop, engineer for the applicant, submitted a statement of probable earnings based on an increase in the number of consumers on contemplated extensions. In these estimates, he used a minimum of 750 cubic feet per month. Mr. Lathrop estimated that, with the extensions which the company proposes to make, it could add 119 new consumers, bringing its total number of patrons to 351.

It would appear that instead of a minimum of 500 cubic feet, as originally proposed, the applicant could attain results practically as satisfactory by placing its minimum at 750 cubic feet.

It was stated at the hearing that the persons engaged in truck farming would find it difficult to operate successfully under the changed rates.

Many applications analagous to the one under consideration have been brought before the Commission and, doubtless, many others will be. But in nearly every instance, the Commission finds that the facts surrounding these applications differ to a greater or less extent. Hence, we have repeatedly announced that each application must be considered and judged by the conditions and facts surrounding it.

Application No. 5 and Application No. 392, heretofore decided by this Commission, present features analagous to the present application, yet differing sufficiently to require the difference which will be found



in the opinions and orders in those cases and in the opinion and order in the present application.

In its opinion and order on Application No. 5, the Commission approved of the following rates:

**Meter rates:**

Minimum charge, \$1.25 per month for 750 cubic feet or less.

Next 750 cubic feet, 12½ cents per month. Per 100 cubic feet.

Over 1,500 cubic feet, 10 cents per month. Per 100 cubic feet.

**Flat rate, \$1.50 per month.**

In Application No. 392, the following rates were approved:

Flat rate of \$1.00 per month for water applied to one lot only, when such lot is occupied by one family, 60 feet to be regarded as the maximum width for one lot. Additions to or in excess of one lot shall pay an additional sum as follows:

If a consumer is paying \$1.00 per lot and if he owns an adjoining lot he shall pay \$1.50 for the two. If he owns a lot and one half he shall pay \$1.25 and in such ratio for anything he may own in addition to one lot, provided the additional property joins the original lot, and provided, further, that he uses water on the additional land.

That where there is more than one house on a lot the price shall be as follows:

For one occupied house on lot, \$1.00.

For two occupied houses on lot, \$1.50, total, or 75 cents for each house.

If there are three or more occupied houses on a lot, the price shall be \$2.00 per lot divided equally among the occupants thereon.

That where meters have been or have to be installed, the minimum charge shall be \$1.00 per month per 1,000 cubic feet, the cost of such installation of meters to be borne by the owners of the water company, and 10 cents per 100 cubic feet for excess over the minimum of 1,000 cubic feet.

It will be noted that there is considerable difference, not only in the minimum rate, but also in the quantity to which consumers are entitled under the minimum rate, which difference, however, is easily explained when the plant value and operating expenses are considered, and also when consideration is given to the fact that especially in Application No. 392 the owner of the utility testified that he was entirely satisfied with the minimum of \$1.00, provided that minimum applied to but one lot. It should be remembered that in the case at bar, instead of consumers having one lot, while there are some lots, many of the holdings are acre and half-acre lots. This is true, to a greater or less extent, of Application No. 5.

It appears from the testimony which was given at the hearing that it is the intention of applicant to install meters throughout its entire

system and it is to that purpose that a part of the money realized from the bonds is to be devoted. It cannot complete such installation at once and in view of the fact that some of the holdings are so large, and the further fact that some of the consumers having such holdings may prefer a flat rate, I suggest that if there be any who prefer the flat rate of \$1.50 minimum, instead of the meter rate of \$1.25 minimum for 750 cubic feet, that such rate be approved until such time as the company can install the meter. This cannot be burdensome upon the person having a small holding, as he has the recourse of immediately asking for a meter and receiving the meter rate.

Holders of acre tracts have been gardening successfully under these rates. The rates I shall recommend for Lawndale are somewhat lower than those in force on the Hawthorne Tract.

As an alternative in such instances where no meter is provided, I shall recommend that a flat rate of \$1.50 per month be used.

I recommend that Lawndale Land and Water Company be given authority to change from its present flat rate basis and to establish the following schedule of rates:

1. Flat rate \$1.50 per month, or
2. (a) \$1.25 for any part of the first 750 cubic feet, and 10 cents per 100 cubic feet for water in excess of 750 cubic feet.  
(b) Special Rate No. 1: To consumers who agree to pay a minimum monthly bill of \$2.00, 10 cents per 100 for first 1,000 cubic feet; 7½ cents per 100 cubic feet for any additional water used.  
(c) Special Rate No. 2: To consumers who agree to pay a minimum monthly bill of \$3.00, 7½ cents per 100 cubic feet for all water used.

I shall now consider that part of the application in which Lawndale Land and Water Company asks that the Commission validate its action previously taken in issuing 1,500 shares of capital stock of the par value of \$100 each. Applicant's stock is owned by Charles B. Hopper and A. H. MacFarland. Two other parties qualify as directors.

There would appear no reason why stock to the amount of \$150,000 should be issued by this company. I recommend that the applicant be authorized to issue not to exceed \$75,000 in stock. This figure is not taken to represent the value of the properties, but it more closely approximates the value than does the sum of \$150,000 and it affords an easy basis of exchange. The present shareholders may, without inconvenience, surrender their stock and receive stock in return on a basis of one share for two.

That part of the application in which Lawndale Land and Water Company asks for authority to mortgage its property may readily be granted. The company desires to make extensions which are necessary in the conduct of its business.

I pass now to that portion of the application in which Lawndale Land and Water Company asks for authority to issue its six per cent bonds in sufficient amount to raise \$40,000. It is proposed to issue these bonds under a mortgage and deed of trust to Los Angeles Title and Trust Company dated July 1, 1912, providing for a total issue of \$50,000, maturing July 1, 1932. The applicant herein proposes, from the proceeds from the sale of these bonds, to pay existing indebtedness to the amount of \$15,773.79, and to provide for additions and betterments to its property \$24,303.60; total, \$40,077.39.

I find that the indebtedness which the applicant desires to pay from the proceeds of its bonds consists of the following:

|   |                    |
|---|--------------------|
| Hopper-MacFarland Construction Company, for money advanced..... | \$12,383 07        |
| F. A. Lathrop, for engineering report.....                      | 1,120 00           |
| M. H. Bennett.....  | 100 00             |
| Kello & Brown.....  | 95 50              |
| Henry R. Worthington Meter Company.....                         | 1,747 00           |
| Southern California Edison Company.....                         | 43 60              |
| Loopost Binding Company.....                                    | 26 25              |
| United Casting Company.....                                     | 216 65             |
| Typogravure Company.....  | 15 50              |
| H. R. Boynton Company.....                                      | 26 22              |
| <b>Total .....</b>  | <b>\$15,773 79</b> |

It appears that the amount due the Hopper-MacFarland Construction Company for money advanced represents, in reality, the applicant's deficit. Hopper-MacFarland Construction Company is largely controlled by Mr. Hopper and Mr. MacFarland, who own the stock of Lawndale Land and Water Company. I am of the opinion that bonds should not be issued for this deficit. The payments made by the construction company on behalf of Mr. MacFarland and Mr. Hopper may be regarded as payments made upon their stock to make good the losses of the applicant. Of the other indebtedness which the company desires to refund from the proceeds of its bonds, I find, with two exceptions, that the other items are chargeable to operating expenses. These two exceptions are the Henry R. Worthington Meter Company, \$1,747, and F. A. Lathrop for engineering report, \$1,120. A portion of the expense incurred in the Lathrop report may properly be charged to capital and a portion may be charged to operating expenses.

The additions and betterments which the applicant desires to finance from the proceeds of its bonds are enumerated as follows:

|  |                    |
|--|--------------------|
| 200 meters .....   | \$1,500 00         |
| Labor of installation, at \$5.00 each.....               | 1,000 00           |
| 4-inch casing, including cost of laying and fitting..... | 4,160 00           |
| 10-inch casing, including laying and fitting.....        | 7,643 60           |
| Replacement of 4-inch casing.....                        | 2,000 00           |
| 20,000 feet of 4-inch casing.....                        | 8,000 00           |
| <b>Total .....</b>                                       | <b>\$24,303 60</b> |

To this may be added the sum due the Henry R. Worthington Meter Company of \$1,747, making a total of \$26,050.60. It appears, however, that in the above list are items properly chargeable to replacement to an amount of at least \$2,000, leaving a balance of \$24,050.60. The testimony shows that by further extensions, additional patrons may be obtained by applicant. I recommend, therefore, that \$1,000 additional be provided for extensions, making a total of \$25,050.60.

I shall recommend, therefore, that the applicant herein be authorized to issue bonds not to exceed \$25,000.

At the hearing, Mr. Hopper, the president of Lawndale Land and Water Company, stated that he would be willing to guarantee the bonds and I recommend that the guarantee be made both by Mr. Hopper and Mr. MacFarland. It was stated by Mr. Hopper that the bonds could be sold probably above 90.

Lawndale Land and Water Company has not kept its books in accordance with the Commission's uniform system of accounts. It should be required to open a proper set of books as a condition precedent to the granting of its application.

I shall recommend also that meters be placed at the request of the consumer, or at the option of the company, and that meters and their placement be at the expense of the company, and that all service connections be made at the expense of the company. This is in accordance with public policy as expressed in previous decisions of this Commission.

While I am not disposed at this time to recommend that the Commission proceed against the applicant herein for its violation of the Public Utilities Act in taking over the properties of the Lawndale Water Company and in issuing its stock without proper application to the Commission, I am constrained, nevertheless, to call applicant's attention to the provisions of the Public Utilities Act and to caution it that the Commission will not be inclined to pass lightly any further infringement of its terms.

I recommend the following form of order:

#### ORDER.

Lawndale Land and Water Company having made application to this Commission for authority to purchase the water properties of Lawndale Water Company, and Lawndale Water Company having made application to sell its water properties; and Lawndale Land and Water Company having made application to the Commission for authority to issue 1,500 shares of its capital stock of the par value of \$100 each; to execute a mortgage of its property to Los Angeles Title and Trust Company to secure an issue of bonds; to issue bonds sufficient to raise \$40,000 to be issued under its mortgage and deed of trust to Los Angeles Title and Trust Company dated July 1, 1912, providing for an issue of \$50,000 six per cent bonds maturing July 1, 1932; and to change its

rates from the present flat rate basis to a meter basis; and a hearing having been held; and it appearing that the public convenience can best be served by authorizing the sale of the water properties by Lawndale Water Company to Lawndale Land and Water Company;

And it appearing further that Lawndale Land and Water Company should be authorized to mortgage its property to secure a bonded indebtedness and to issue a portion of its stock and bonds as applied for and to change its rates from a flat rate basis to a meter rate basis;

And it appearing further that the purposes for which it proposes to issue its stock and its bonds are not, in whole or in part, reasonably chargeable to operating expenses or income;

*It is hereby ordered* that Lawndale Land and Water Company be given authority, and it is hereby given authority, to purchase the water properties of Lawndale Water Company, and Lawndale Water Company is hereby given authority to sell the same.

*It is hereby ordered* that Lawndale Land and Water Company be given authority, and it is hereby given authority, to mortgage its property to Los Angeles Title and Trust Company to secure a bonded indebtedness in an authorized sum of \$50,000.

*It is hereby ordered* that Lawndale Land and Water Company be authorized, and it is hereby authorized, to issue 750 shares of its capital stock of the par value of \$100 each.

*It is hereby ordered* that Lawndale Land and Water Company be given authority, and it is hereby given authority, to issue \$25,000 in bonds under its mortgage and deed of trust to Los Angeles Title and Trust Company dated July 1, 1912. Said bonds and said stock herein authorized to be issued shall be issued under the following conditions and not otherwise:

(1) Said 750 shares of stock shall be issued to Charles B. Hopper and A. H. MacFarland in lieu of their present holdings of stock of Lawndale Land and Water Company and not in addition thereto.

(2) Said \$25,000 in bonds shall be issued for the following purposes:

|  |             |
|--|-------------|
| (a) Meters and installation.....   | \$2,500 00  |
| (b) Pipes, installation thereof, connections, etc., in extending<br>applicant's system ..... | 22,500 00   |
| Total .....  | \$25,000 00 |

(3) Said bonds shall be sold so as to net applicant not less than 90.

(4) Applicant shall, within thirty days, present evidence satisfactory to the Commission that it has opened a set of books in accordance with this Commission's system of accounts.

(5) Applicant shall submit, in a form to be approved by this Commission, a guarantee of the payment of said \$25,000 in bonds, both as to principal and interest, by Charles B. Hopper and A. H. MacFarland.

(6) Applicant shall keep separate, true and accurate accounts

showing the receipt and application in detail of the proceeds of the sale of the stock and bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, it shall make verified reports to the Commission stating the sale or sales of said stock and bonds during the preceding month, the terms and conditions of sale, moneys or properties realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

It is hereby found as a fact that the following rates are reasonable to be charged by Lawndale Land and Water Company for water delivered to its consumers and the said rates are hereby established to become effective on the first day of June, 1913:

1. Flat rate \$1.50 per month, or

2. (a) \$1.25 for any part of the first 750 cubic feet, and 10 cents per 100 cubic feet for water in excess of 750 cubic feet.

(b) Special Rate No. 1: To consumers who agree to pay a minimum monthly bill of \$2.00, 10 cents per 100 for first 1,000 cubic feet; 7½ cents per 100 cubic feet for any additional water used.

(c) Special Rate No. 2: To consumers who agree to pay a minimum monthly bill of \$3.00, 7½ cents per 100 cubic feet for all water used.

*It is further ordered* that meters be placed at the request of the consumer or at the option of the company and that such meters and their placement be at the expense of the company, and that all service connections be made at the expense of the company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of May, 1913.

## DECISION No. 661.

IN THE MATTER OF THE APPLICATION OF MOUNT KONOCTI  
LIGHT AND POWER COMPANY FOR AUTHORITY TO  
ISSUE TWENTY THOUSAND DOLLARS OF CAPITAL  
STOCK AND A NOTE FOR FIVE THOUSAND DOLLARS.

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Application No. 422.*Decided May 9, 1913.*

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Applicant permitted to issue and sell, at not less than par, \$20,000 of its capital stock and, at not less than the face value thereof, its promissory note for \$5,000 due in two years with interest at 6 per cent and to use the proceeds in the discharge of obligations amounting to \$15,000, and for new construction estimated to cost \$10,000.

A. C. Hastings, for Applicant.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application by Mount Konocti Light and Power Company for authority to issue 200 shares of its capital stock at the par value of \$100 per share and to issue a two-year six per cent promissory note in the sum of \$5,000. The applicant proposes to use the proceeds from the sale of its stock to pay indebtedness already incurred and to be incurred in extending its lines. The proceeds from the note are also to be used for transmission and distribution lines into new territory.

Applicant was incorporated on April 25, 1911, for the purpose of distributing electricity in Lake County. It purchases power from the Snow Mountain Water and Power Company at Hopland and carries it into Lakeport, from which point it distributes into surrounding territory. It operates in Hopland, Lakeport, Kelseyville, and is extending its lines to Upper Lake and plans extensions into Scott's Valley and to mineral spring resorts scattered throughout Lake County.

Mount Konocti Light and Power Company has an authorized issue of 500 shares of stock of the par value of \$100 each, of which 300 shares have been issued. The company has five stockholders. Applicant presents a statement of indebtedness to the amount of \$15,000. Of this amount \$11,300 is due three of the five stockholders and \$3,700 is due for equipment, etc. The indebtedness was all incurred for additions and betterments to applicant's property.

Applicant places the cost of its extensions into Upper Lake and Kelseyville at \$21,500, and the cost of the extension into Scott's Valley at \$3,500.

Mount Konocti Light and Power Company is a close corporation, the stock of which is held among four families. It is the intention of the present stockholders to purchase the additional stock to be sold at par.

I find that the purposes for which the stock is to be issued are purposes for which stock may be properly issued under the Public Utilities Act. I therefore recommend that the application be granted and submit the following form of order:

**ORDER.**

Mount Konocti Light and Power Company having made application to the Railroad Commission for authority to issue 200 shares of its capital stock of the par value of \$100 per share and to issue its promissory note for \$5,000, due in two years with interest at 6 per cent;

And a hearing having been held, and it appearing that the extensions and improvements for which the stock and note are to be issued are reasonably required in the conduct of applicant's business and that such purposes are not in whole or in part chargeable to operating expenses or to income;

*It is hereby ordered* that Mount Konocti Light and Power Company be and it is hereby authorized to issue 200 shares of its capital stock of the par value of \$100 per share and also to issue its promissory note for \$5,000, due in two years, with interest at 6 per cent. Said stock and said note may be issued upon the following conditions and not otherwise:

1. The said 200 shares of stock shall be sold at not less than \$100 per share.

2. Said note of \$5,000 shall be issued so as to net the applicant herein the face value thereof.

3. The proceeds from the sale of said 200 shares of stock and from said note of \$5,000 shall be applied only as follows: To pay indebtedness of Mount Konocti Light and Power Company as per Exhibit II of Mount Konocti Light and Power Company's application on file with this Commission, \$15,000; for transmission and distribution lines into Upper Lake and Scott's Valley, \$10,000.

4. Mount Konocti Light and Power Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock and note hereby authorized to be issued, and on or before the twenty-fifth day of each month it shall make verified reports to the Commission stating the sale or sales of said stock and note during the preceding month, the terms and conditions of sale, moneys or properties realized therefrom, and the use and application of such moneys, all in accordance with this Com-



mission's General Order No. 24, which order in so far as applicable is made a part of this order.

5. The authority hereby given to apply only to such stock and to such note as may be issued prior to December 31, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of May, 1913.

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DECISION No. 662.

IN THE MATTER OF THE APPLICATION OF SIERRA MADRE  
TELEPHONE AND TELEGRAPH COMPANY FOR AN  
ORDER AUTHORIZING IT TO ISSUE STOCK IN THE  
AMOUNT OF ONE THOUSAND DOLLARS.

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Application No. 489.

*Decided May 9, 1913.*

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REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application by Sierra Madre Telephone and Telegraph Company for authority to issue ten shares of its capital stock of the par value of \$100 per share and to use the proceeds therefrom toward the purchase of a switchboard. Applicant conducts a telephone business in Sierra Madre and desires at this time to add to its equipment by the purchase of a common battery multiple switchboard. Applicant places the cost of this equipment installed in its own plant at \$1,400. It is proposed by the sale of ten shares of capital stock at not less than 90 to raise at least \$900 of this sum.

The applicant herein has an authorized issue of 500 shares of capital stock, of which 169 are now outstanding. I find that the purposes for which the applicant desires to issue stock are purposes for which stock may properly be issued under the Public Utilities Act. I therefore recommend that the application be granted and submit the following form of order:

**ORDER.**

Sierra Madre Telephone and Telegraph Company having applied to the Railroad Commission for authority to issue ten shares of its capital stock of the par value of \$100 per share, and a hearing having been held; and it appearing that the equipment which it proposes to purchase from the proceeds of the sale of its stock is required in the conduct of its business; and that the purposes for which such stock is

to be issued are not in whole or in part chargeable to operating expenses or to income;

*It is hereby ordered* that Sierra Madre Telephone and Telegraph Company be and it is hereby authorized to issue ten shares of its capital stock upon the following conditions and not otherwise:

1. Said stock shall be sold at not less than \$90 per share.
2. The proceeds from the sale of said stock shall be used toward the purchase of a common battery multiple switchboard.
3. The authority hereby given to issue said stock shall apply only to such stock as shall be issued prior to December 31, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of May, 1913.

DECISION No. 663.

MAYFIELD CHAMBER OF COMMERCE

*vs.*

PENINSULAR RAILWAY COMPANY.

Case No. 377.

*Decided May 9, 1913.*

Complaint that defendant was charging unreasonable and discriminatory rates in that it charged five cents more from Mayfield Junction to Palo Alto and Stanford University and in the opposite direction than it charges from and to Lincoln avenue and Stanford avenue in Mayfield, the difference in distance being about .46 of a mile.

Defendant objected to the lower uniform charge to and from all points in Mayfield upon the grounds: (1) that passengers traveling from Mayfield north to Palo Alto or Stanford University enjoyed a lower rate per mile than is given to any other portion of defendant's road and that to make the rate from Mayfield Junction north the same as from Lincoln avenue will still further reduce the rate per mile for passengers from Mayfield; (2) that such reduction would throw defendant's whole system of rates out of line; and (3) that defendant's operations show a deficit each year of from \$8,000 to \$12,000. Said objections answered.

The Commission found that the fare which should be charged by defendant should be the same between all stopping places in Mayfield and other points on defendant's line and entered an order accordingly.

*Sidney M. Cuthbertson*, for Complainant.

*S. F. Lieb and Owen D. Richardson*, for Defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

In this case complainant, the Mayfield Chamber of Commerce, by its secretary, Sidney M. Cuthbertson, complains that the defendant,

Peninsular Railway Company, charges a rate of five cents from Lincoln avenue, Mayfield, and from Stanford avenue, Mayfield, to Palo Alto and Stanford University, and ten cents from Mayfield Junction, Mayfield, to Palo Alto and Stanford University, the same charges being made in the opposite direction; that Stanford avenue, Lincoln avenue and Mayfield Junction are all within the incorporated limits of the town of Mayfield; and complainant alleges that it is unreasonable to charge a greater rate to and from Mayfield Junction than is charged to and from other stopping places or stations in Mayfield.

The distance from Mayfield Junction to Lincoln avenue, Mayfield, according to the testimony of complainant is .33 of a mile, and complainant alleges that if five cents is to be added to the fare from Mayfield to Palo Alto and Stanford University when passengers start from Mayfield Junction, then five cents should be deducted from the fare to all points south when passengers start from Mayfield Junction.

The tariffs of defendant disclose, and the testimony shows, that the rate from Mayfield Junction to certain points south thereof is five cents less than from Lincoln avenue and Stanford avenue in Mayfield, while in other instances, or to some towns, it is the same.

Complainant further testified that this addition of five cents from Mayfield Junction to the Mayfield rate going north was all that it had to complain of; that there was no objection to a rate of five cents being charged between stopping places in Mayfield; nor was there anything in the complaint of complainant as to other rates or as to service. We therefore confine our consideration to the subject-matter of the complaint.

Defendant denied that the rate in question was an unreasonable or a discriminatory rate and justified the addition of five cents to the Mayfield rate to Stanford University and Palo Alto when passengers start from Mayfield Junction or travel from Stanford University and Palo Alto to Mayfield Junction, upon three grounds:

*First*—That passengers traveling from Mayfield north to Palo Alto or Stanford University enjoy a lower rate per mile than is given on any other portion of defendant's road. Defendant claims that the distance from Mayfield Junction to Lincoln Avenue, Mayfield, is .46 of a mile, and that to make the rate from Mayfield Junction north, the same as from Lincoln avenue, will still further reduce the rate per mile for passengers from Mayfield.

*Second*—That to reduce the rate from Mayfield Junction to Palo Alto and Stanford University would throw defendant's whole system of rates out of line; and

*Third*—That defendant Peninsular Railway Company is operated at a loss, showing a deficit each month of from \$8,000 to \$12,000.

I shall consider each of these defenses separately:

*First*—While it is true, according to the tariffs of defendant on file with this Commission, that passengers traveling from Mayfield enjoy a lower rate per mile than that which prevails on other parts of defendant's system, it is also true that when passengers board the trains at Mayfield Junction and leave them at Lincoln avenue or Stanford avenue, Mayfield, or when they make any trip solely within the limits of Mayfield, they pay a five-cent fare, and in such instances pay a much higher rate per mile than is charged on any other part of defendant's system. The truth of the matter is that that portion of defendant's system from Mayfield to Palo Alto and Stanford University may well be regarded in the nature of a street car service, and while the rate per mile is lower than the rate per mile on longer trips, when the distances are considered, the discrimination is not undue.

*Second*—To answer defendant's contention that to reduce the rate from Mayfield Junction to Stanford University and Palo Alto would throw defendant's whole system of rates out of line, it need only be said that if Mayfield Junction be eliminated from the tariff and the fare made the same from and to all stopping places in Mayfield, defendant's system of rates would not be disarranged or interfered with.

*Third*—The testimony of defendant, the Peninsular Railway Company, that it is operating at a loss and shows a deficit each month of from \$8,000 to \$12,000, is uncontroverted; but it also appears from the testimony of defendant in this case that the travel from Mayfield Junction is very slight and its revenues can not be impaired to any appreciable extent by eliminating Mayfield Junction from its tariffs and making the rate from and to all stopping places in Mayfield the same.

My idea that its revenues will not be impaired, is supported by the fact that in adopting this plan of making its rates it will be compensated, in a small way, by an advance of five cents on some of its fares from Mayfield south, in event there is any travel from Mayfield Junction to points south thereof.

It should also be remembered that the Peninsular Railway Company is a comparatively new enterprise, and is really passing through a formative period, and that such loss as its operations now show is no greater than is to be expected by any similar road while it is building up its business.

I find as a fact that the fare which should be charged by Peninsular Railway Company should be the same between all stopping places in Mayfield and other points on defendant's line.

I recommend the following order :

**ORDER.**

Mayfield Chamber of Commerce having complained to the Commission that the Peninsular Railway Company was charging unreasonable and discriminatory rates in that it charged five cents more from Mayfield Junction to Palo Alto and Stanford University, and in the opposite direction, than it charges from and to Lincoln avenue and Stanford avenue in Mayfield, and a hearing having been held, and the matters and things comprehended in the complaint thoroughly investigated; and the Commission finding as a fact that the rates between all stopping places in Mayfield and other points on defendant's line should be the same;

*It is hereby ordered* that defendant Peninsular Railway Company amend its tariffs making the rate the same between Stanford avenue, Lincoln avenue, and Mayfield Junction, Mayfield, and all other points on defendant's line, such tariff to be filed with this Commission not later than June 1, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 9th day of May, 1913.

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DECISION No. 664.

IN THE MATTER OF THE APPLICATION OF NORTHERN CALIFORNIA POWER COMPANY, CONSOLIDATED, FOR AN ORDER AUTHORIZING AN INCREASE IN RATES FOR ELECTRIC POWER IN THE UNINCORPORATED TOWNS OF ANDERSON AND COTTONWOOD, SHASTA COUNTY, AND IN THE UNINCORPORATED TERRITORY SURROUNDING THE INCORPORATED TOWNS OF KENNETT, REDDING, RED BLUFF AND CORNING.

Application No. 62.

*Decided May 9, 1913.*

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**SUPPLEMENTAL OPINION.**

**REPORT OF THE COMMISSION.**

ESHLEMAN and GORDON, *Commissioners.*

On July 13, 1912, after a hearing duly held the Commission filed its opinion and order in the matter of this application establishing certain tentative rates for electrical energy in the territory involved. The

effective date of this order was August 2, 1912. On August 1, 1912, petitioner asked that the effective date be extended thirty days and on August 3, 1912, the Commission issued its order extending effective date as requested. On August 16, 1912, sixteen days before the extended effective date of the Commission's order in this proceeding, the Commission issued its order granting a rehearing in the matter of this application, and after several continuances a public hearing was held at Red Bluff on December 28, 1912, and thereafter on December 30, 1912, the Commission filed its final opinion and order establishing a complete system of rates, to become effective on and after January 10, 1913, and which was by stipulation to apply in all territory served by applicant. It will be noted from the above summary that the first order of the Commission in the proceeding, and which order set forth certain tentative rates to apply in the territory involved in petitioner's application, at no time became effective or affected in any way the rates of petitioner as of October 10, 1911.

It appears that there exists a general misapprehension on the part of the patrons of the Northern California Power Company, Consolidated, which misapprehension is shared by that utility itself as to what rates were actually in effect throughout the territory involved in the application from September 1, 1912, to January 10, 1913, and it is with a view to correcting the misunderstanding above referred to, while not in any manner affecting, altering or amending the Commission's previous order in the matter of this application, that we recommend the following form of supplemental order:

#### SUPPLEMENTAL ORDER.

Northern California Power Company, Consolidated, having on May 22, 1912, applied to this Commission for an order authorizing an increase in rates for electric power in certain portions of Shasta and Tehama counties and after a hearing having been duly held and the Commission having subsequently entered its opinion and order in the matter; and

Whereas the effective date of said order of the Commission was extended by proper order and subsequently said original order was suspended by reason of the fact that prior to its extended effective date an order of the Commission granting a rehearing in said proceeding was duly made; and

Whereas after a rehearing duly held the Commission on December 30, 1912, entered its opinion and order in the matter authorizing the establishment of certain rates for electric energy supplied by petitioner in the territory involved in the application and by stipulation in all other territory under the jurisdiction of the Commission which is being served by petitioner; and

Whereas there appears to exist a general misunderstanding on the part of the patrons of petitioner which misunderstanding appears to be shared by petitioner as to what rates were in effect prior to January 10, 1913, and it further appearing that by reason of this misunderstanding an injustice might in some cases result,

*It is hereby ordered* that, within twenty days from the date hereof, all sums in excess of the effective rates as of October 10, 1911, collected by petitioner from its patrons for electric service supplied prior to January 1, 1913, in territory within the jurisdiction of the Commission, shall be refunded to such patrons.

*And it is further ordered* that a true and accurate record of all refunds made under this order be kept by petitioner and that a certified copy of such record shall be filed with the Commission on or before June 1, 1913.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 9th day of May, 1913.

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DECISION No. 665.

IN THE MATTER OF THE APPLICATION OF CONSERVATIVE  
REALTY COMPANY, FOR AN ORDER FIXING ITS RATES  
FOR WATER SERVICE IN THE COUNTY OF LOS  
ANGELES.

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Application No. 494.

*Decided May 9, 1913.*

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**Applicant**, a land and water company, petitioned for permission to charge 15 cents per thousand gallons with a minimum rate of \$1.25 per month for water delivered in unincorporated territory. Under so-called water contracts originally entered into with its consumers, the present rate is \$1.00 per month per consumer. The net earnings from water operations for 1912 were stated to be \$1,323.48. Consumers, however, charged that part of the operating expense is properly chargeable to the land business.

**Held**, There is no doubt that, as against the Commission's power to fix rates, the contracts involved in this case would have no effect, yet such contracts when voluntarily entered into may be taken by the Commission as the measure of the rate to be fixed and as an admission, on the part of the company, that such rate is fair to take. It is only when the public interest demands it or the contracts are manifestly unfair that the Commission should exercise its authority to substitute some other rate for the rate set up in such contracts, neither of which two conditions exist in this case.

**Held**, Pursuant to the terms of said contracts, either party may have a meter put in but all meters hereafter put in voluntarily by applicant shall be put in at the expense of said applicant.

A rate of 15 cents per thousand gallons, with a minimum charge of \$1.00 per month, established as the just and reasonable rate to be charged.

*Jones & Bennett*, for Applicant.

*F. B. Amend*, for Protestants.

#### REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

This is an application on the part of the Conservative Realty Company, a land and water corporation, operating in the county of Los Angeles, to have established for it a rate of 15 cents per thousand gallons, with a minimum rate of \$1.25 per month for water delivered to its consumers in unincorporated territory. This company furnishes about 600 consumers, slightly over half of whom are in unincorporated territory and the remainder in the city of Watts.

The company was originally organized to conduct a subdivision real estate business. Later it organized a water department in connection with the development of its subdivisions. Subsequently, this water system was gradually extended to outside territory not owned or controlled by the applicant. Thereafter a part of the territory was incorporated into the city of Watts and the board of trustees in that city has fixed a rate of 15 cents per thousand gallons, with a minimum monthly rate of \$1.25 per consumer.

The company has an authorized stock issue of \$100,000, all of which is outstanding, and with the exception of two shares owned by W. W. Pedder, it has no bonded indebtedness or other outstanding obligations.

In the year 1912, its total receipts were \$10,889.36, while its operating expenses were \$9,565.88, leaving a net operating revenue of \$1,323.48. It is urged by the consumers, however, that part of this operating expense is properly chargeable to the land business of the company. The company has outstanding so-called water contracts, usually in form as follows:

|                   |                         |         |
|-------------------|-------------------------|---------|
| Original          |                         |         |
| Contract No. .... | Capital Stock \$100,000 | \$10.00 |

#### CONSERVATIVE REALTY COMPANY.

(Incorporated under the laws of the State of California.)

*This agreement*, Made and entered into at the City of Los Angeles, State of California, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_, by and between the CONSERVATIVE REALTY COMPANY, a corporation, with its principal place of business in the city of Los Angeles, said county and State, the party of the first part, and \_\_\_\_\_, the party of the second part,

*Witnesseth*, That for and in consideration of the sum of two and 50/100 dollars (\$\_\_\_\_) and a further sum of \$2.50 per month for a term of three (3) months, and the performance of the covenants contained herein on the part of the party of the second part, and in the manner hereinafter stated, said party of the first part will furnish and deliver to lot No. \_\_\_\_\_ in block \_\_\_\_\_, of the \_\_\_\_\_ as per map recorded in Book \_\_\_\_\_, page



----, Records of Los Angeles County, water upon completion of water plant and distributing system and payment by party of the second part of \$5.00 for tapping main and conducting water pipes to the before described property and subject to the following conditions: The cost of the water not to exceed \$1.00 per month, which sum the party of the second part agrees to pay in advance to the party of the first part, at the home office of the above named corporation in the city of Los Angeles, or its agent, and also agrees to the following contract, the terms and conditions of which are as follows:

In consideration of the delivery of water to me by the above named corporation, I hereby agree that I will not use the water for watering streets, and further, that I will not water my lawns, trees, flowers or plants, except between the hours of 6 and 9 p. m. and 5 and 8 p. m., without the consent of the said first party or its agent, or use water outside the enclosure or off the premises, for which payment is hereby made, or allow the same to be used or to run to waste, either inside or outside of my premises.

It is also further agreed that it shall be the privilege of either of the parties hereto to ask that a meter be put in to measure the water used by the consumer, the conditions of which shall be as follows:

The consumer shall put up a deposit of \$8.00 with the corporation as a guarantee of good faith, which amount shall be refunded to the consumer at any time said consumer may wish to discontinue using the water. The corporation hereby agrees to put in meter and furnish unlimited amount of water at the rate of fifteen cents per thousand gallons; provided, however, that the minimum charge for each family shall in no case be less than seventy-five cents per month.

If this contract is violated the corporation shall have the right to cut off the water supply.

And it is agreed by and between the parties hereto that time, punctuality and manner of payment of the above named sums, is made the essence of this agreement, and that if any sums shall become due and unpaid, or if default shall be made in any of the covenants herein contained, then the rights and benefits arising out of this contract which inure to the said party of the second part, shall be forfeited, as well as all moneys paid under this agreement to the said party of the first part.

And it is further agreed that if said party of the second part shall well and truly pay all the above named sums and perform all of the covenants herein contained on ----- part, then the said party of the first part shall and will accept the attached coupons at the face value of one dollar each for water supplied to the within described property.

And it is further agreed that the party of the first part can cancel this agreement at any time before the completion of the before mentioned water plant and distributing system, by refunding all money paid on this agreement; provided, further, that should the said water plant and distributing system be erected and completed, that this document annuls and cancels all former water agreements by and between said parties.

This contract is assignable upon the following conditions, viz: That the assignee shall give the above named corporation notice of such assignment that it may be registered on the books of said corporation, and shall pay said corporation a fee of fifty cents for such registration.

And it is further agreed by and between the parties hereto that this agreement does and shall bind their heirs, executors, administrators, assigns and successors.

*In witness whereof*, The said party of the first part, by resolution of its board of directors, has caused these presents to be subscribed by its president and secretary, and its corporate seal to be hereunto affixed, and the party of the second part has hereunto set ----- hand and seal the day and year first above written.

(Corporate seal.)

CONSERVATIVE REALTY COMPANY.

By -----, President.

Attest: -----, Secretary.

[Seal]

The chief contention of the consumers is that the company by entering into contracts in this form has obligated itself to deliver water at a flat rate of \$1.00 per month per consumer holding such contracts. We have already expressed our opinion with reference to the effect of contracts made by a public utility with its patrons in Application No. 118, and while there is no doubt that as against the Commission's power to fix rates the contracts involved in this case would have no effect, yet such contracts when voluntarily entered into may be taken by the Commission as the measure of the rate to be fixed, and as an admission on the part of the company that such rate is fair to take. In Application No. 118 the Commission said in this regard:

“Before leaving this subject, however, I think it well to say that contracts entered into in good faith between public utilities and their patrons that are not forced or compelled in any way, and are based upon an adequate consideration, should be adopted so far as is consistent with adequate regulation as the basis for the rates for the service performed by a public utility for its patrons.”

The Commission is being flooded with applications on the part of land and water companies to repudiate the contracts entered into by such companies with their consumers when it is found that the contracts do not operate advantageously to the utility. But we have cases before us where the utilities just as strenuously urge that such contracts be kept in effect when it happens that they are favorable to the utility. With this attitude on the part of the utility I have very little patience, and I would have no more patience with the attitude of the consumers when they voluntarily and freely enter into contracts if such consumers should seek to get rid of them, and it is only when the public interest demands it or the contracts are manifestly unfair that I think this Commission should exercise its authority to substitute some other

rate for the rate set up in such contracts. The man of ordinary business honesty tries to carry out his contracts, even when he finds that they are disadvantageous to him, just as he expects those contracting with him to recognize their own obligations.

Nothing has been brought to my attention in this case which leads me to believe that either of the two conditions set out above which will be held by this Commission as justification for substituting a new rate for a rate set out in a contract exists with reference to the applicant, and I recommend that the applicant be required to furnish water to its consumers under the jurisdiction of this Commission at 15 cents per thousand gallons, if the service be metered, with a minimum charge of \$1.00 per month per consumer. In prescribing this rate I have adopted the highest minimum charge set out in the contract and the charge agreed upon per thousand gallons if the water is metered. Under the terms of the contract either party may have a meter put in, but all meters hereafter put in voluntarily by the applicant shall be put in at the expense of said applicant.

I recommend the following order:

**ORDER.**

Conservative Realty Company, a corporation, having applied to this Commission to fix the rates which it shall charge to its consumers in unincorporated territory served by it in the county of Los Angeles, and a hearing having been held and being fully advised in the premises, I hereby find as a fact that under all the circumstances of this case that a rate of 15 cents per thousand gallons with a minimum charge of \$1.00 per month per consumer is a just and reasonable charge to be exacted by the applicant, Conservative Realty Company, and basing this order on the foregoing finding of fact and the findings of fact in the opinion hereto, *it is hereby ordered*—

1. That the rate of 15 cents per thousand gallons with a minimum charge per consumer of \$1.00 per month be and the same is hereby established as a just and reasonable rate to be charged by Conservative Realty Company to its consumers in unincorporated territory in the county of Los Angeles.

2. Meters to be put in at the request of either party, but all meters put in voluntarily by the Conservative Realty Company shall be paid for by said Conservative Realty Company.

3. This order to take effect and be in force on and after the 1st day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of May, 1913.

Decision No. 666, grade crossing; not printed. See end of volume.

DECISION No. 667.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR THE APPROVAL OF A LEASE OF RAILROAD EQUIPMENT, DATED MARCH 1, 1913, FROM COMMERCIAL TRUST COMPANY TO SOUTHERN PACIFIC COMPANY, AND AN AGREEMENT DATED MARCH 1, 1913, BETWEEN HARRY E. RIGHTER AND WM. L. FRY, WITH COMMERCIAL TRUST COMPANY AND SOUTHERN PACIFIC COMPANY AND FOR AN ORDER AUTHORIZING THE ISSUANCE OF TRUST CERTIFICATES AS PROVIDED IN SAID LEASE AND AGREEMENT.

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Application No. 484.

*Decided May 9, 1913.*

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*Guy V. Shoup and Henley C. Booth, for Applicant.*

REPORT OF THE COMMISSION

ESHLEMAN, *Commissioner.*

Verified supplemental application having been filed with this Commission setting up the fact that it is impossible to sell the certificates previously authorized hereunder at par, and that said certificates can not be sold except there be a discount amounting to four (4%) per cent on the basis of the average maturities; and the Commission being of the opinion that this is a matter upon which further hearing is not necessary, and that the supplemental application is made in good faith,

*It is hereby ordered* that the Southern Pacific Company, to aid in obtaining subscriptions for said equipment trust certificates, be authorized to pay discounts and commissions not to exceed four (4%) per cent on the basis of the average maturities of the face amount of said equipment trust certificates issued.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of May, 1913.

## DECISION No. 668.

IN THE MATTER OF THE ONE-WAY, ROUND-TRIP AND COMMUTATION FARES AND THE RULES AND REGULATIONS AFFECTING THE SAME OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY FOR THE TRANSPORTATION OF PASSENGERS BETWEEN ALL POINTS ON THE SOUTHERN DIVISION OF SAID NORTHWESTERN PACIFIC RAILROAD COMPANY, AND OF THE PRACTICE OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY IN CHARGING FOR THE TRANSPORTATION OF PASSENGERS FARES LESS THAN THE FARES PROVIDED IN ITS PASSENGER FARE SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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Case No. 333.

*Decided May 14, 1913.*

(On the Commission's own initiative.)

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Northwestern Pacific Railroad Company was organized in 1907 as the consolidated company of several then existing railroad companies, and operates a ferry line between San Francisco and Sausalito and railroad lines with total operative mileage of 400.86 miles, steam and electric motive power, from Sausalito northerly through Marin, Sonoma and Mendocino counties. The company is capitalized for \$35,000,000 and has an outstanding bonded indebtedness of \$22,693,000.

The proceedings herein were had upon complaint that defendant was charging and collecting, for the transportation of passengers between San Francisco and San Rafael, fares less than the fares provided in its passenger tariffs on file with the Commission and upon the Commission's own motion to inquire into all of defendant's passenger fares including the one-way round-trip excursion and commutation fares and all the rules and regulations affecting such fares between all points on defendant's southern division.

In defense to reductions in rates, defendant pleaded that operating expenses were unusual, due to combined ferry and rail operation; that no dividends had been paid on its stock; that it had been necessary to expend surplus earnings for improvements and, therefore, the revenues from passenger service were such as to preclude any reduction and that the fares in suburban territory were as low as fares elsewhere for the same service and were not in themselves remunerative. No general denial was made of the charge of discrimination, unreasonableness and lack of uniformity in the southern division fares, rules and regulations generally.

Practice of defendant in providing from income a fund for retirement of bonds and expending from income, for permanent improvements, in lieu of distributing the same as dividends, discussed. Valuation of defendant's line incomplete. Detailed analysis of defendant's capitalization, income account and general methods of charging and collecting fares, the Commission finding:

- (1) That some adjustment of the fares of defendant should be made so as to remove existing inequalities and discriminations in its southern division one-way and round-trip fares; also the commutation fares other than those applying between points in its suburban territory.

- (2) As to commutation fares charged and collected by defendant for transportation of passengers between points located in its suburban territory that many of such fares are unreasonable, unjust and discriminatory.
- (3) That the practice of restricting the use of so-called "school" commutation tickets to children and other young persons attending school to the exclusion of other children and young persons not attending school is discriminatory between persons and unlawful and that the children's monthly commutation tickets should be opened alike to all children or young persons under stated ages traveling under substantially similar circumstances. That defendant's practice of collecting and retaining additional fares from passengers boarding trains at agency stations without tickets admits of much discrimination and is unreasonable and unjust and should be discontinued. As a reasonable practice, defendant, on its steam lines, should be permitted to collect, without discrimination, a charge of 25 cents in addition to the fare for transportation from each passenger boarding trains at agency stations without tickets after having had opportunity to purchase same for which a receipt should be given and which should be redeemable in money at its face value at any agency of the carrier if presented within thirty days from its date.
- (4) That defendant's practice of selling for 50 cents a two-coupon ticket between San Francisco and San Rafael good for transportation in either direction, and at the same time maintain in its tariff a one-way fare of 35 cents between San Francisco and San Rafael and certain intermediate points on its lines, not only results in a discrimination against the intermediate points, but is unreasonable and unjust and not in accordance with the provisions of defendant's lawful tariffs on file with the Commission.
- (5) Defendant having provided in its tariffs bases for making Sunday and Saturday to Monday round-trip excursion fares, which are in some cases higher than the aggregate of the intermediate fares, that such practice is not unlawful, unduly discriminatory or unjust or unreasonable, and should be authorized to continue same until further order of the Commission.

Defendant given ninety days in which to eliminate the inequalities and inconsistencies above referred to and twenty days within which to publish and file tariffs setting out rates, rules and regulations established by the Commission as just and reasonable.

*Lilienthal, McKinstry & Raymond and Joseph Haber*, for Northwestern Pacific Railroad Company.

*Carlos P. Griffin*, for Corte Madera Improvement Club.

*Edward I. Butler and E. O. Allen*, for the town of San Rafael.

*O. T. Meldon*, for the town of Larkspur.

*Marcus Rosenthal*, for California Schuetzen Park Building Association.

*Thomas E. Hayden and J. J. Mazza*, for Novato.

*George F. Cosby*, for North San Anselmo Improvement Club.

*E. A. Wood*, for school authorities of Marin County.

*S. M. Augustine*, for Marin County Civic League.

*Royal A. Vitrussek*, for commuters north of Santa Rosa.

#### REPORT OF THE COMMISSION.

**THELEN and LOVELAND, Commissioners.**

On November 15, 1912, this proceeding was instituted by the Commission upon information that the defendant was charging and collecting for the transportation of passengers between San Francisco and San Rafael fares less than the fares provided in its lawful passenger tariffs on file with the Commission.

In the original investigation the defendant's one-way fares between San Francisco and San Rafael and intermediate points only were put in issue. The scope of the investigation was subsequently enlarged so as to bring into question all of the defendant's passenger fares, including the one-way, round-trip excursion and commutation fares, and all the rules and regulations affecting such fares, between all points on its southern division.

This action was taken by the Commission because numerous informal complaints were received from individuals, civic associations and municipalities against fares, rules and regulations other than those comprehended in the original investigation and some of which the defendant had declined to informally adjust in cases submitted to it.

The jurisdiction of the Commission in this matter was not questioned and in view of the specific grant in the constitution of power to the Commission "to authorize the issuance of excursion and commutation tickets at special rates" there seems to be no grounds for doubting that jurisdiction over excursion and commutation fares, although fares of a special character, is as fully vested in the Commission, in every regard, as is jurisdiction over the regular one-way fares of the carrier, which is well understood.

It is contended that the carrier is greatly over-capitalized, and for that reason the reports filed by it with the Commission do not correctly reflect the return on the actual investment; that a decrease in the cost of operating its passenger service had been effected by the consolidation of the several lines formerly serving Marin, Sonoma and Mendocino counties into one line and by the elimination of the regular transbay ferry service between San Francisco and Tiburon; that the fares between San Francisco, Tiburon and points reached by the electric lines of defendant are excessive, unreasonable and unjust as compared with fares between San Francisco and other suburban points served by other lines and suburban fares in other localities, and are discriminatory as between themselves; that "school fares" in Marin County and between various points on the line of the carrier are discriminatory and unjust as compared with "school fares" between San Francisco and those points and unreasonable of themselves; that fares within the corporate limits of certain points on the line of defendant are excessive and unjust and that the general adjustment of fares between stations on the southern division of the defendant is discriminatory and inconsistent and unreasonable. Also, the right and justice of the practice of charging and collecting through round-trip fares higher than the aggregate of the intermediate fares and of imposing and collecting an additional fare as a penalty from passengers boarding trains at agency stations without tickets, after opportunity to purchase same had been given, is put directly in issue. The practice of restrict-

ing the use of the monthly commutation tickets to the purchaser thereof is alleged to be unreasonable and unjust.

The defendant contends that the operation of its line, because of its nature—part ferry and part rail—is carried on at a great expense; that no dividends have been paid on its stock since its organization; that it has been necessary to expend all the surplus for improvements and that therefore the revenues from its passenger service are such as to preclude any reduction in the present fares. However, no general denial of the charge of discrimination, unreasonableness and lack of uniformity in its southern division fares, rules and regulations generally, was made by the defendant. In fact, one of the defendant's witnesses testified that the Commission would be aiding the carrier as well as the public in straightening out the inequalities of its rates. As to the fares in suburban territory, defendant specifically contends that such fares are as low as fares elsewhere for the same service and further that such fares in suburban territory are not in themselves remunerative.

It appears that the Northwestern Pacific Railroad Company was organized during the year 1907 and represents a consolidation of several companies which were in existence at that time, and is capitalized for \$35,000,000 and has an outstanding bonded indebtedness of \$22,693,000.

With the exception of ten directors' shares the entire capital stock is held in equal amounts by the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company. The book value of the shares held by the Southern Pacific Company is shown in its reports as \$3,990,242.39, and the book value of the shares held by the Atchison, Topeka and Santa Fe Railway Company is shown as \$3,660,260.31 in its reports. It appears, therefore, that \$7,650,000 more closely approximates the actual capitalization of the line than the \$35,000,000 outstanding in stock. Again, at the time of the purchase of the stocks of the constituent companies and consolidation of the properties there was no detail valuation made of the properties of such companies and because of the keen rivalry, for the properties, existing between the Atchison, Topeka and Santa Fe Railway and Southern Pacific Company, the amount paid for the stock of these companies might have been in excess of the actual value of the properties. A concise and brief history of the conditions which prevailed at that time and which led up to the consolidation was given by a witness for the defendant, as follows:

"The Southern Pacific Company and the Atchison had been secretly, as far as the other one was concerned, endeavoring to get into that redwood country to the north which we thought was a very valuable thing. \* \* \* The Atchison had bought these



northern properties about Eureka, the lines of railroad about Eureka, and had attempted, but failed, to buy the old Donahue road. At this end the Southern Pacific succeeded in getting both the Donahue and North Shore roads and then \* \* \* both energetically organized railroad companies and made surveys with a desire, we (the Atchison) of building from our Eureka end to San Francisco and the Southern Pacific building north from their end to Eureka; but they were staggered by the enormous cost of this undertaking and it became evident that it was absurd for two companies to parallel each other in that way; they never could have recouped themselves at all; therefore they came together and formed an organization in which each owns one half of the stock."

The Commission has not proceeded with its valuation of the line of the Northwestern Pacific Railroad Company far enough to enable it to form its conclusions in regard thereto and therefore can not place a check against the book values of the stock outstanding, nor has it investigated in detail into the many transactions involved in the consolidation, for the reason that many of the records containing such detail have been destroyed or are not available.

The capital stock of \$35,000,000 is admittedly excessive, and as a witness for the defendant testified, it would be absurd to expect to earn interest thereon.

Of the bonds outstanding \$10,516,000 have been issued for the purpose of constructing new lines to connect the northern and southern divisions. The interest on these bonds is not paid out of the earnings of the operated line but out of the funds realized from their sale and the construction accounts are kept separate from and are not involved in the accounts of the operated lines; therefore, for the purpose of this investigation, no further attention need be given to this part of the funded debt of defendant. The funded debt outstanding, including all underlying bonds, against the entire operated line is as follows:

|   |                   |
|---|-------------------|
| Underlying issues outstanding at date of reorganization, and not yet liquidated:  |                   |
| San Francisco and Northern Pacific Railway Company's issue 1889-----  | \$3,718,000       |
| California Northwestern Railway Company's issue 1898 -----  | 954,000           |
| Eureka River and Eureka Railroad Company's issue 1894 -----   | 313,000           |
|   | <hr/> \$4,985,000 |
| Issued, out of general mortgage fund of \$35,000,000, for reorganization -----  | 5,094,000         |
| Issued, out of general mortgage fund of \$35,000,000, for additions and betterments-----                                  | 600,000           |
| Issued, out of general mortgage fund of \$35,000,000, to retire North Pacific Coast Railroad Company's issue of 1893----- | 1,498,000         |
|   | <hr/>             |
| Total bonded indebtedness outstanding against operated line.  | \$12,177,000      |

The issue of \$5,094,000 out of the general mortgage fund was made for the purpose of taking up a note of the Northwestern Pacific Railroad Company, of which the present company is the successor. The note had been executed to the Southern Pacific Company at the time of the consolidation, and by the terms of the agreement it was to be paid out of the proceeds of the sale of general mortgage bonds. The bonds were issued to the Southern Pacific at 95 in exchange for the note with accrued interest.

The total operative mileage of the Northwestern Pacific Railroad Company for the year ending June 30, 1912, was 400.86 miles; therefore the bonded indebtedness is approximately \$30,000 per mile of operated line. The funded debt per mile of road in the United States for the year ending June 30, 1910, averaged approximately \$39,000. However, with an assumed capital stock of \$7,650,000 and a bonded indebtedness of \$12,177,000 the securities outstanding aggregate \$19,827,000, or approximately \$50,000 per mile of operated line, which is a very liberal "capitalization" for this particular line of road, all things being considered.

The income account of the Northwestern Pacific Railroad Company for the year ending June 30, 1912, presents the following items:

|   |                |              |
|---|----------------|--------------|
| Operating revenues -----                        | \$3,499,099 95 |              |
| Operating expenses -----                        | 2,563,618 29   |              |
| Net operating revenue -----                     |                | \$935,481 66 |
| Taxes -----                                     |                | 143,175 11   |
| Operating income -----                          |                | \$792,306 55 |
| Rent of joint facilities -----                  | \$102,268 97   |              |
| Interest -----                                  | 898 35         |              |
| Other income -----                              |                | 103,167 32   |
| Gross corporate income -----                    |                | \$895,473 87 |
| The following deductions were made from income: |                |              |
| Rents and hire of equipment -----               | \$4,938 23     |              |
| Interest accrued on funded debt -----           | 577,264 20     |              |
| Sinking and redemption funds -----              | 39,788 65      |              |
| Total -----                                     |                | 621,991 08   |
| The net corporate income was -----              |                | \$273,482 79 |

The interest paid represents interest at  $4\frac{1}{2}$  per cent and 5 per cent on bonds outstanding against the operated line only. No dividends were paid on capital stock. The entire net income was added to surplus, which on June 30, 1912, was \$1,746,906.12. Of the surplus as of June 30, 1912, \$692,389.20 accrued prior to and was available at the time of consolidation. The amount credited to surplus does not, as is commonly supposed, represent cash on hand. The surplus here shown

merely represents the balance of the profit and loss account as of June 30, 1912, and all of it has been expended for additions and betterments and replacing old equipment, as indicated in the following table:

| Year ending—        | Expended for additions and betterments. | Expended for replacement of equipment. |
|---------------------|---|--|
| June 30, 1907.....  | \$44,783 58                             | \$40,520 58                            |
| June 30, 1908.....  | 468,737 70                              | 104,048 19                             |
| June 30, 1909.....  | 153,266 79                              | 55,412 17                              |
| June 30, 1910.....  | 214,229 16                              | See note                               |
| June 30, 1911.....  | 430,481 88                              | See note                               |
| June 30, 1912.....  | 293,442 30                              | See note                               |
| <b>Totals .....</b> | <b>\$1,594,941 41</b>                   | <b>\$199,980 94</b>                    |

NOTE.—Since 1909 charged to depreciation in maintenance accounts.

As of June 30, 1912, the total expenditures for additions and betterments since consolidation was approximately \$8,200 in excess of the funds available from surplus, which was appropriated from current receipts subsequent to closing of the year's accounts.

The expenditure out of surplus for new equipment has been \$683,-475.20, and as set out above, the expenditure for replacing old equipment has been \$199,981, aggregating for equipment expenditure alone \$883,465.20 since the consolidation.

In Case No. 117, *Geo. A. Legg vs. Nevada County Narrow Gauge Railroad Company and Southern Pacific Railroad Company*, this Commission held that—"Railroad should make due allowance for depreciation and should be permitted to accumulate sufficient surplus to renew facilities worn out in service, but the public should not be called upon to provide the money for new construction and permanent improvements. If the stockholders wish to invest their money in new construction and the like, the public might be reasonably asked to pay fair returns on the additional capital thus invested, but we believe it is absurd to ask the public to furnish both principal and interest, through the medium of excessive rates. Some of these improvements are designed to do service for all time and the shippers and traveling public of to-day should not be burdened to provide facilities for future generations." This principle is supported by the decision of the Supreme Court of the United States in the case of the *Illinois Central Railway vs. Interstate Commerce Commission*, 206 U. S. 441-462, wherein it is said: "It would seem as if expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic that they accommodated during the period of their duration and that improvements that will last many years should not be charged wholly against the revenue of a single year." It appears, therefore, that the expenditure for the new

equipment out of surplus might reasonably be questioned, particularly in view of the fact that the defendant contends that no dividends have been paid its stockholders. Again, the defendant has set aside to sinking and redemption funds, since consolidation, the sum of \$219,099.30 to retire bonds in accordance with their terms. In Case No. 117, *supra*, the Commission said: "We do not believe the public should be called upon to pay excessive rates so that bond issues can be retired from earnings of a road. The stockholders are the beneficiaries as bonds are retired and if bonds must be retired before the stockholders are prepared to do so, they—not the public—should pay for the mistake in financing." In this case, however, it is presumed that the management acted with full knowledge of the stockholders, the Atchison, Topeka and Santa Fe Railway and Southern Pacific Company in providing from income a fund for retirement of bonds and expending from income for permanent improvements in lieu of distributing the same as dividends and there can be no objection to such disposition of the income, under such circumstances.

The revenue of the Northwestern Pacific Railroad is derived largely from its passenger business. For the year ending June 30, 1912, the gross passenger revenue was \$1,959,120.48, while the gross freight revenue was but \$1,068,179.65, for the southern division. In other words, of the entire revenue from the operation of the southern division, 62.72 per cent was from its passenger service and but 35.28 per cent was from its freight service. Although the bulk of the passenger traffic is between points in the territory located between San Francisco, Fairfax and San Rafael and Tiburon, and hereinafter referred to as "suburban" territory, this traffic does not afford the bulk of the southern division passenger revenue as is evidenced from the following statement:

**Southern Division Passenger Travel—Year Ending December 31, 1912.**

| Kind of traffic.                        | Passengers.      | Miles.             | Revenue.              | Average distance carried. | Average earnings per passenger. | Average earnings per passenger mile. |
|---|------------------|--------------------|-----------------------|---------------------------|---------------------------------|--------------------------------------|
| Suburban commutation                    | 2,597,322        | 35,328,061         | \$181,624 30          | 13.60                     | \$6 99                          | \$0 51                               |
| Suburban (other than commutation) ----- | 2,815,080        | 32,239,237         | 535,619 04            | 11.45                     | 19 03                           | 1 65                                 |
| Main line -----                         | 1,303,571        | 47,997,152         | 1,070,168 65          | 38.82                     | 82 10                           | 2 23                                 |
| <b>Totals -----</b>                     | <b>6,715,973</b> | <b>115,564,450</b> | <b>\$1,787,411 99</b> | <b>17.20</b>              | <b>\$26 61</b>                  | <b>\$1 55</b>                        |

Thus of the 6,715,973 passengers handled over the entire southern division during the year ending December 31, 1912, 5,412,402, or practically 80 per cent, were passengers between points in suburban territory, while the revenue derived from its suburban service was but 40 per cent of the entire revenue. The average earning per passenger

mile from suburban traffic was but 1.06 cents, while it was 2.23 cents from traffic other than suburban.

This table also shows that of the suburban traffic 52 per cent is other than commutation, on which 75 per cent of the entire revenue from suburban passenger traffic accrues. Thus, though the volume of the commutation and other suburban traffic is about equal, the revenue on the latter is three times greater than on the former.

It will be noted that the average earning per passenger mile on suburban commutation traffic is .51 cents, while on other suburban traffic the average is 1.65 cents and that the average on the main line which embraces such traffic as is not suburban or intersuburban territory traffic, the average earning per passenger mile is 2.23 cents.

The defendant presented exhibits to show that the passenger service of its southern division not only does not yield a profit but is actually conducted at a loss and that the freight service in addition to affording the income from operation carries on its back a considerable passenger deficit. This conclusion is arrived at by charging to each branch of the service expenses directly attributable thereto, and by allocating expenses which can not be charged direct to either, on a revenue train mile basis. Under general conditions this method of allocating joint expenses may be fair and proper, but in cases where the passenger service is largely by two- and three-car electric trains and in some cases one-car electric trains, the conditions, in our opinion, are such as to render questionable such a basis for the segregation of joint expenses impossible to charge direct to either service.

That traffic conditions on the Northwestern Pacific Railroad are peculiar to it is apparent, but the contention that the preponderating passenger traffic thereon does not yield its proportion of profit is not sustained, for the reason that the method of arriving at the net results is not properly applicable, in our opinion, to the conditions existing on this line.

Many of the present passenger fares of the defendant were in effect at the time the present company took over the property and its policy has been to continue the rates as it found them without regard to their equity either to the community served or to itself. There seems to have been no adherence to any fixed rule for determining the fares and apparently no relationship was maintained one to the other. As illustrative of these conditions the following tables present a few examples:

| Between—            | and—             | Distance<br>in miles. | One-way<br>fare is— | Rate per<br>mile in cents. |
|---------------------|------------------|-----------------------|---------------------|----------------------------|
| San Francisco ----- | Cloverdale ----- | 85.2                  | \$2 25              | 2.6                        |
| Santa Rosa -----    | Willits -----    | 85.8                  | 3 50                | 4.1                        |
| Healdsburg -----    | Ukiah -----      | 49.9                  | 2 10                | 4.2                        |
| San Francisco ----- | Sonoma -----     | 44.8                  | 1 00                | 2.2                        |
| San Francisco ----- | Cotati -----     | 44                    | 1 15                | 2.6                        |
| San Francisco ----- | Petaluma -----   | 38.5                  | 1 00                | 2.6                        |
| Cloverdale -----    | Hilton -----     | 37.6                  | 1 35                | 3.5                        |
| Hopland -----       | Healdsburg ----- | 32                    | 1 50                | 4.7                        |
| Cloverdale -----    | Santa Rosa ----- | 31.5                  | 1 15                | 3.6                        |
| Healdsburg -----    | Cloverdale ----- | 17.2                  | 0 75                | 4.3                        |
| Petaluma -----      | Fulton -----     | 19.9                  | 0 45                | 2.3                        |
| Hopland -----       | Cloverdale ----- | 14.8                  | 0 75                | 5.0                        |
| Healdsburg -----    | Santa Rosa ----- | 14.3                  | 0 40                | 2.7                        |
| Petaluma -----      | Santa Rosa ----- | 14.8                  | 0 30                | 2.0                        |

Again:

| Between—            | and—               | Distance<br>in miles. | Individual<br>monthly<br>commutation<br>fare is— | Rate per<br>mile in<br>cents is— |
|---------------------|--------------------|-----------------------|--|----------------------------------|
| San Francisco ----- | San Rafael -----   | 16.9                  | \$5 00   | 0.49                             |
| San Francisco ----- | San Anselmo -----  | 16.5                  | 5 00   | 0.51                             |
| San Francisco ----- | Corte Madera ----- | 12.6                  | 5 00   | 0.66                             |
| San Francisco ----- | Mill Valley -----  | 11.8                  | 4 00   | 0.56                             |
| Santa Rosa -----    | Petaluma -----     | 15.2                  | 8 50   | 0.93                             |
| Santa Rosa -----    | Windsor -----      | 9.1                   | 5 75   | 1.05                             |
| Santa Rosa -----    | Healdsburg -----   | 14.2                  | 9 20   | 1.08                             |
| Santa Rosa -----    | Geyserville -----  | 22.1                  | 12 00  | 0.91                             |
| Santa Rosa -----    | Cloverdale -----   | 31.4                  | 12 50  | 0.66                             |
| San Francisco ----- | Novato -----       | 27.8                  | 10 50  | 0.63                             |
| San Francisco ----- | Sonoma -----       | 44.8                  | 12 50  | 0.46                             |

Again the monthly commutation fares for school children between San Francisco and all points reached via the electric line is \$3.00, which includes points located as far distant as 18 miles from San Francisco; while for the same tickets between San Rafael and San Anselmo, a distance of 2.5 miles; or between Corte Madera and San Rafael, a distance of 4.4 miles; or between Corte Madera and Almonte, a distance of 2.7 miles, a fare of \$3.00 is charged. Between Tiburon and Almonte, a distance of 6 miles, the monthly commutation fare for children attending school is \$4.60.

It is urged that the fares between San Francisco and the suburban points on the line of defendant should be the same as the fares between San Francisco and Alameda County points so that the former would be at no disadvantage in the matter of transportation fares to and from San Francisco. It would, no doubt, be very advantageous to the property owners of Marin County if the Northwestern Pacific Railroad would make the same suburban rate as the Southern Pacific does to Alameda County with its greater population and travel, and

it might eventually prove beneficial to the railroad, but if the railroad does not care to experiment in this direction the Commission can not force them to do so, the Commission being empowered to prescribe just and reasonable rates only.

While the individual monthly commutation fare between San Francisco and Corte Madera for a distance of 12.6 miles via the lines of the defendant is \$5.00 or at a rate of .66 cents per mile, and the monthly commutation fare between San Francisco and Thousand Oaks for a distance of 12.1 miles via the lines of the Southern Pacific Company is but \$3.00 or at a rate of .41 cents per mile, and the individual monthly commutation fare between San Francisco and Mill Valley for a distance of 11.8 miles via the lines of the defendant is \$4.00 or at a rate of .56 cents per mile, while the similar fare between San Francisco and Northbrae for a distance of 11.2 miles via the lines of San Francisco-Oakland Terminal Railways is but \$3.00 or at a rate of .45 cents per mile, the fact must not be lost sight of that the individual monthly commutation fare between San Francisco and West Oakland (Pine street) for a distance of 5 miles via the Southern Pacific Company is \$3.00 or at a rate of .99 cents per mile, or that between San Francisco and Oakland (Fortieth street and San Pablo avenue) for a distance of 6.7 miles via the San Francisco-Oakland Terminal Railways the fare is \$3.00 or at a rate of .74 cents per mile.

The average distance to which the \$5.00 individual monthly commutation rate between San Francisco and points on the lines of defendant applies is 15.25 miles; thus the average rate per mile to the \$5.00 commutation zone is .55 cents; the average distance to which the \$4.00 individual monthly commutation rate between San Francisco and points on the line of defendant applies is 9.75 miles; thus the average rate per mile to the \$4.00 commutation zone is .68 cents; while the average distance to which the \$3.00 individual monthly commutation rate between San Francisco and Alameda County points on the lines of the Southern Pacific Company is 8.55 miles, an average per mile of .58 cents and the average distance to which the \$3.00 individual monthly commutation rate between San Francisco and Alameda County points on the line of the San Francisco-Oakland Terminal Railways is 8.95 miles—an average rate per mile of .56 cents. In all cases the transportation is by rail and ferry, but in the case of the travel from and to Alameda County points the service is between thickly settled communities between which the flow of traffic is more or less regular and closely approaches a street car service, while the service between San Francisco and the Marin County suburban points is more or less irregular, being handled mostly during a few hours of the forenoon and afternoon, and the volume of traffic is considerably less. Again, the service by ferry, an expensive factor, is much shorter in the trans-

portation to Alameda County points, the distance between San Francisco and Sausalito being 6.5 miles and between San Francisco and the Alameda County piers averaging approximately three miles.

In the light of these facts it would not, in our opinion, be proper for this Commission to require the defendant to establish the same fares between San Francisco and Marin County suburban points as those voluntarily established between San Francisco and Alameda County points by the carriers serving the latter territory. Nor is the fact that a commutation rate of \$3.00 was in effect at one time, between San Francisco and San Rafael, as was testified, a controlling reason why that fare should not be exceeded at the present time unless it were shown that that fare would be reasonable for the present service. There seems to be some misapprehension as to the transferability of the individual monthly commutation tickets of the Southern Pacific Company and the San Francisco-Oakland Terminal Railways between San Francisco and Alameda County points. These tickets as their title imports are good for the use of the purchaser only and are not transferable, and this is an express condition under which the ticket is sold. Therefore, if any usage other than that authorized by the carrier's tariff is made or permitted it is improper and unlawful.

The practice of limiting the use of such tickets in certain designated ways is not improper if no discrimination is created thereby. The custom of providing fares for commutation tickets lower per mile than the rates of one-way trips is quite general and is justified generally upon the grounds that the sale in large quantities of the transportation and its limited use are the considerations for the reduction in the fare per trip, or otherwise expressed, the daily use of the transportation facilities by the person or persons designated in the ticket entitles such person or persons to a special low rate. Thus, the rule is that the rate per mile increases as the condition of the ticket's interchangeability is enlarged. Manifestly, therefore, if the limitation as to the use of the ticket is a factor which is taken into consideration in arriving at the rate therefor, any usage other than that originally contemplated and provided in tariffs authorizing the sale of the ticket is improper and may be unprofitable to the carrier.

That some adjustment of the fares of the defendant should be made so as to remove existing inequalities is manifest, and we are of the opinion that the defendant should be given ninety days in which to prepare and present to the Commission tariffs eliminating the inequalities and discriminations in its southern division one-way and round-trip fares, also the commutation fares other than those applying between points in its suburban territory.

As to the commutation fares charged and collected by the defendant for transportation of passengers between points located in its suburban



territory, we are of the opinion that many of such fares are unreasonable, unjust and discriminatory and that as to such transportation the fares hereinafter in the order specified are just and reasonable.

We find as a fact that the practice of restricting the use of so-called "school" commutation tickets to children and other young persons attending school to the exclusion of other children and young persons not attending school is discriminatory between persons and unlawful, and that the children's monthly individual commutation ticket should be opened alike to all children or young persons under stated ages traveling under substantially similar circumstances.

We find as a fact that the carrier's practice of selling for 50 cents a two-coupon ticket between San Francisco and San Rafael, both of the coupons of which are good for transportation in either direction between the points named, and at the same time maintaining in its tariff a one-way fare of 35 cents between San Francisco and San Rafael, Fairfax, San Anselmo, Ross, Kentfield, Escalle, Larkspur, Schuetzen, Green Brae, Corte Madera and Chapman, not only results in a discrimination against the intermediate points named, in that a party by purchasing such a ticket could secure transportation for two trips from San Francisco to San Rafael for a total expense of 50 cents, while if two one-way continuous trip tickets were purchased to any of the intermediate points designated the transportation could not be secured for less than 70 cents, but is also unreasonable and unjust and not in accordance with the provisions of defendant's lawful tariffs on file with the Commission. We are of the opinion that the defendant should be required to provide similar tickets for sale between San Francisco and Fairfax, San Anselmo, Ross, Kentfield, Escalle, Larkspur, Schuetzen, Green Brae, Corte Madera and Chapman and intermediate points, under lawful tariff authority therefor, as a just and reasonable practice.

The defendant has provided in its tariffs bases for making Sunday and Saturday-to-Monday round-trip excursion fares, which are, in some cases, higher than the aggregate of the intermediate fares. Thus the Saturday-to-Monday round-trip fare between San Francisco and Santa Rosa is one and one half times the regular one-way fare, or \$2.25; the Saturday-to-Monday round-trip fare between San Francisco and Petaluma is one and one half times the six months' one-way fare between those points, or \$1.50. The one-way fare between Petaluma and Santa Rosa is 30 cents; therefore, for the round-trip the fare would be 60 cents, which amount added to the Sunday-to-Monday round-trip between San Francisco and Petaluma would enable a party by repurchasing at Petaluma, to secure the Saturday-to-Monday round-trip transportation between San Francisco and Santa Rosa for \$2.10. Again, the round-trip suburban fares used in combination with one-

way fares beyond suburban points, in some cases have the effect of providing lower round-trip fares than is authorized in carrier's tariffs. Thus the round-trip fare from San Francisco to San Rafael is 50 cents; the one-way fare between San Rafael and Petaluma is 65 cents, therefore for the round-trip the fare would be \$1.30. The aggregate of these separate fares is \$1.80, for which amount a daily round-trip between San Francisco and Petaluma could be made, while the fares in carrier's tariff for such a round-trip on any day except Saturday or Sunday is \$2.00, or 20 cents in excess of the aggregate of the intermediate fares.

It is contended that such adjustments are in violation of the constitution and the Public Utilities Act prohibiting the charging of any greater compensation as a through rate than the aggregate of the intermediate rates. Such a conclusion, logically followed out, leads to such results as to preclude the belief that it was ever the intention that this prohibition should apply to any other passenger fares than one-way fares higher than the aggregate of the intermediate one-way fares, and if applied will tend to discourage the granting of special excursion or week-end or suburban round-trips for a special service, as the granting of such fares would demoralize the entire one-way passenger fare adjustment. That these round-trip fares of the defendant are of a special nature contemplating a different service than that furnished under the one-way fares is apparent. The Sunday and the Saturday-to-Monday round-trip fares are purely excursion fares. The suburban round-trip fares are for a suburban electric service, and we are of the opinion should not serve as a basis for fares to points beyond suburban territory. We are of the opinion that this practice is not unlawful, unduly discriminatory or unjust or unreasonable, and that as to such round-trip fares in excess of the aggregate of the intermediate fares, the defendant should be authorized to continue same until further order of the Commission.

The defendant's practice of collecting additional fares from passengers boarding trains at agency stations without tickets, opportunity to purchase same having been given, is quite general—particularly with the steam lines—and is justified on the grounds that the carrier provides at agency stations facilities for the sale of tickets, which for various reasons it prefers passengers to procure before boarding trains, and if passengers neglect to avail themselves of the opportunity before boarding trains, the carrier is within its right in imposing and collecting a penalty.

The right of the carrier to impose such a penalty is doubtful and carriers in the past seemed to have relied upon express statutory authority therefor, which seems to have been repealed by subsequent acts which contain no such authority. Carriers are entitled to just and

reasonable rates and fares and are prohibited from charging and collecting rates or fares that are unjust, unreasonable and discriminatory. If, therefore, a fare is charged and collected from a person who has boarded a train at an agency station, without a ticket, higher than the fare charged a party traveling from the same agency station to the same destination under circumstances alike in every particular, except as to the purchase of the ticket, can it be said that the party who failed to procure a ticket before boarding the train is not being discriminated against by the amount he pays the carriers as a "penalty" for not having purchased a ticket, or if the amount paid for the ticket is a reasonable fare for the service that any amount in excess thereof is not unreasonable? There is in our opinion no merit to the contention that a different service is rendered in the case where the fare is paid on the train than that rendered where the ticket is purchased before boarding the train, the transportation being between the same points and all other circumstances being alike.

The Commission has made a wide investigation into this practice, embracing practically all of the states, and has developed that in the majority of the states where the additional train fare is collected it is refunded to party paying same upon presentation of receipt therefor to any agent of the carrier making the collection. It also appears that in most cases where the additional train fare is collected and retained that it is done so under express statutory authority or order of the regulatory body of the state governing such matters.

It is our opinion that the practice of collecting and retaining such excess admits of much discrimination and is unreasonable and unjust and should be discontinued. As a reasonable practice we recommend that, on the steam lines the carrier be permitted to collect without discrimination, a charge of 25 cents in addition to the fare for transportation from each passenger boarding trains at agency stations without tickets, after having had opportunity to purchase same, for which a receipt should be given and which should be redeemable in money at its face value at any agency of the carrier, if presented within thirty days from its date. This will at once protect the carrier and at same time free the traveling public from any unreasonable imposition or discriminatory treatment.

We submit the following form of order:

#### ORDER.

The Commission having heretofore instituted an investigation into the one-way round-trip and commutation fares and the rules and regulations affecting the same of the Northwestern Pacific Railroad Company for the transportation of passengers between all points on the southern division of said Northwestern Pacific Railroad Company, and of the practice of the Northwestern Pacific Railroad Company in

charging for the transportation of passengers fares less than the fares provided in its passenger fare schedules on file with the Railroad Commission of the State of California, and a hearing having been had and being fully apprised in the premises, *it is hereby ordered*

1. That the Northwestern Pacific Railroad Company present to this Commission within ninety days from the date of this order tariffs eliminating the inequalities and inconsistencies in its one-way round-trip and commutation fares for the transportation of passengers between points on its line, known as the southern division—except the commutation fares for transportation between points hereinafter in this order specified.

2. That the commutation fares set out in Schedule No. 1, attached hereto and made part hereof, be and they are hereby established as just and reasonable fares to be charged by the Northwestern Pacific Railroad Company between the points on its line, as specified.

3. That the Northwestern Pacific Railroad Company provide in its lawful tariffs and place on sale at all places where such tickets for the transportation of passengers are sold, a two-coupon ticket, each coupon of which being good in either direction between San Francisco and Chapman, Corte Madera, Green Brae, Scheutzen, Larkspur, Escalle, Kentfield, Ross, San Anselmo and Fairfax, for a fare of fifty cents as a just and reasonable charge for such service.

4. That the Northwestern Pacific Railroad Company be and it is hereby authorized to continue its present round-trip fares in excess of the aggregate of the intermediate round-trip fares until further order of the Commission.

5. That the Northwestern Pacific Railroad Company cease and desist from charging passengers boarding its trains at agency stations without tickets, fares different from the fares charged passengers boarding its trains with tickets, in cases where the transportation is alike in all its circumstances, except as to the place of the purchase of the transportation; provided, however, that the Northwestern Pacific Railroad Company may under proper tariff authority collect without discrimination a charge of 25 cents in addition to the fare for transportation from each passenger boarding its steam trains at agency stations without tickets after having had an opportunity to purchase same and issue a receipt therefor redeemable in money at its face value if presented within thirty days from its date at any agency of said company.

*And it is further ordered* that the Northwestern Pacific Railroad Company publish and file, in accordance with the rules of this Commission, and within twenty (20) days from date thereof, tariffs setting

out rates, rules and regulations herein established as just and reasonable.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of May, 1913.

# SCHEDULE No. 1.

| Between—<br><br>and—      | San Francisco.                        |  | Union High School.                               | San Rafael.                           |  |
|---------------------------|---------------------------------------|--|--|---------------------------------------|--|
|                           | Monthly individual commutation fares. | Children's monthly individual commutation fares. | Children's monthly individual commutation fares. | Monthly individual commutation fares. | Children's monthly individual commutation fares. |
| Sausalito -----           | \$3 00                                | \$3 00   | \$2 00   | \$3 00                                | \$2 90   |
| Pine -----                | 3 50                                  | 3 00   | 2 00   | 3 00                                  | 2 55   |
| Waldo -----               | 3 50                                  | 3 00   | 2 00   | 3 00                                  | 2 35   |
| Manzanita -----           | 3 50                                  | 3 00   | 2 00   | 3 00                                  | 2 15   |
| Almonte -----             | 3 50                                  | 3 00   | -----  | 3 00                                  | 2 00   |
| Union High School-----    | \$4 00                                | \$3 00   | -----  | \$3 00                                | \$2 10   |
| Locust Avenue -----       | 4 00                                  | 3 00   | \$2 00   | 3 00                                  | 2 25   |
| Park Avenue -----         | 4 00                                  | 3 00   | 2 00   | 3 00                                  | 2 35   |
| Mill Valley -----         | 4 00                                  | 3 00   | 2 00   | 3 00                                  | 2 50   |
| Alto -----                | \$4 00                                | \$3 00   | \$2 00   | \$3 00                                | \$2 00   |
| Chapman -----             | 4 50                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Corte Madera -----        | 4 50                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Baltimore Park -----      | 4 50                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Larkspur -----            | \$4 50                                | \$3 00   | \$2 00   | \$3 00                                | \$2 00   |
| Escalle -----             | 4 50                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Kentfield -----           | 5 00                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Ross -----                | 5 00                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Bolinas Avenue -----      | 5 00                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| San Anselmo -----         | 5 00                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Yolanda -----             | 5 00                                  | 3 00   | 2 15   | 3 00                                  | 2 00   |
| Lansdale -----            | 5 00                                  | 3 00   | 2 25   | 3 00                                  | 2 00   |
| Pastori -----             | 5 00                                  | 3 00   | 2 35   | 3 00                                  | 2 00   |
| Fairfax -----             | 5 00                                  | 3 00   | 2 45   | 3 00                                  | 2 00   |
| Detour -----              | \$5 00                                | \$3 00   | \$2 00   | \$3 00                                | \$2 00   |
| Green Brae -----          | 5 00                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| Schuetzen -----           | 5 00                                  | 3 00   | 2 00   | 3 00                                  | 2 00   |
| San Rafael -----          | 5 00                                  | 3 00   | 2 10   | 3 00                                  | -----  |
| B street, San Rafael----- | 5 00                                  | 3 00   | 2 10   | 3 00                                  | 2 00   |
| West End, San Rafael----- | 5 00                                  | 3 00   | 2 10   | 3 00                                  | 2 00   |
| Belvedere -----           | \$3 50                                | \$3 00   | \$3 00   | \$3 00                                | \$2 45   |
| Tiburon -----             | 3 50                                  | 3 00   | 3 00   | 3 00                                  | 2 45   |
| Hilarita -----            | 4 00                                  | 3 00   | -----  | 3 00                                  | 2 35   |
| Reed -----                | 4 50                                  | 3 00   | -----  | 3 00                                  | 2 15   |
| San Clemente -----        | 5 00                                  | 3 00   | -----  | 3 00                                  | 2 00   |

## DECISION No. 669.

IN THE MATTER OF THE APPLICATION OF MACLAY RANCHO WATER COMPANY FOR PERMISSION TO SELL, AND OF THE CONSOLIDATED SECURITIES COMPANY FOR PERMISSION TO BUY A CERTAIN TELEPHONE SYSTEM AND A CERTAIN WATER AND POWER SYSTEM IN AND ABOUT SAN FERNANDO, LOS ANGELES COUNTY, CALIFORNIA.

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Application No. 545.

*Decided May 15, 1913.*

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## REPORT OF THE COMMISSION

The Maclay Rancho Water Company, having applied to this Commission for an order authorizing it to sell to the Consolidated Securities Company for the sum of \$200,000 certain real and personal property, situated in and about the town of San Fernando, Los Angeles County, California, the property to be transferred being set forth in detail in the proposed contract of sale attached to the application in this proceeding and marked "Exhibit C," and it appearing that among the property to be transferred is a small telephone system serving the territory in and about San Fernando, and also a small water and power system in the same territory, and the Consolidated Securities Company having joined in the application, and the Commission being of the opinion that this is not a case in which a public hearing is necessary, and being of the opinion also that public convenience will be subserved by the granting of this application,

*It is hereby ordered* that Maclay Rancho Water Company be and it is hereby authorized to sell for the sum of \$200,000 the property described and set forth in the contract of sale and purchase attached to the application in this proceeding and marked "Exhibit C," and that Consolidated Securities Company be and it is hereby authorized to purchase said property upon the following condition and not otherwise, to wit:

The price paid for the property, or any portion thereof herein authorized to be transferred, shall not be taken before this Commission or any other public body as representing for rate fixing or other purposes the value of the property transferred.

By order of the Railroad Commission.

Dated at San Francisco, California, this 15th day of May, 1913.

## DECISION No. 670.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY AND WEST SACRAMENTO ELECTRIC, FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING THE PACIFIC GAS AND ELECTRIC COMPANY TO SELL, GRANT AND TRANSFER TO THE WEST SACRAMENTO ELECTRIC PORTIONS OF ITS TRANSMISSION AND DISTRIBUTION LINES, AND CERTAIN OF ITS TRANSFORMERS, SWITCHES AND OTHER ELECTRICAL APPLIANCES AND OTHER PERSONAL PROPERTY DESCRIBED IN DETAIL IN THAT CERTAIN AGREEMENT OF SALE, DATED DECEMBER 27, 1912.

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Application No. 521.

*Decided May 15, 1913.*

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Transfer of electrical distribution lines permitted, it appearing that the price agreed upon between applicants was the fair value of the property involved and because public convenience and necessity will be better served by allowing the sale and purchase as set forth in the application.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is a joint application by Pacific Gas and Electric Company and West Sacramento Electric in which the former asks authority to sell to the latter and the latter asks authority to purchase from the former certain distribution lines in the eastern portion of Yolo County for the sum of five thousand (\$5,000) dollars.

Pacific Gas and Electric Company is engaged in the business of generating, transmitting and distributing electric energy over a large portion of central California, including certain portions of Yolo County adjacent to territory being at present served by the West Sacramento Electric and is under contract to supply to the West Sacramento Electric for resale all electric energy required by that Company.

West Sacramento Electric, a corporation organized in September, 1911, is engaged in the business of distributing the electric energy purchased from Pacific Gas and Electric Company to various consumers, in the eastern portion of Yolo County.

At the hearing in this matter, held at San Francisco on May 6, 1913, it developed that the West Sacramento Electric is closely associated with the West Sacramento Land Company and that the principal territory served and to be served with electric energy by the former is included in certain large tracts of land in the eastern portion of

Yolo County owned or controlled by the latter and it is claimed that by reason of this affiliation between the electric company and the land company that the former is more interested in the development of this particular territory and in a position to better serve the public therein than is the Pacific Gas and Electric Company.

Pacific Gas and Electric Company, being unwilling to construct, maintain and operate the distribution lines which it appears will be necessary to adequately and properly serve electric energy to purchasers of land from the West Sacramento Land Company and to others in territory adjacent to the lands owned and controlled by said land company, desires to withdraw as a retailer of electric energy from the territory involved in the application and requests permission to transfer its business and sell its distribution lines and equipment therein to West Sacramento Electric for the said sum of five thousand (\$5,000) dollars. The property involved in said proposed sale and transfer is more particularly described as follows:

(a) Those three (3) certain electric wires conducting electric energy at an electro-motive force of approximately eleven thousand (11,000) volts which are installed upon the lowest cross-arm located upon each of the poles in that portion of the Pacific Gas and Electric Company's sixty thousand (60,000) volt electric transmission line situate in the county of Yolo, State of California, commonly called the "Sacramento-Davis Tie Line," which extends from its Broderick substation, near the town of Washington, westerly to its intersection with the eleven thousand (11,000) volt electric transmission line now used to deliver electric energy to Reclamation District No. 785, a distance of approximately four (4) miles, together with the pins and insulators supporting said electric wires, and the right to maintain, repair, replace and use said electric wires for the transmission and distribution of electric energy upon the conditions hereinafter specified.

(b) That certain electric transmission line consisting of poles and wires, cross-arms, braces, pins and insulators installed thereon used to deliver to Reclamation District No. 785 electric energy of an electro-motive force of approximately eleven thousand (11,000) volts extending from its intersection with said Sacramento-Davis Tie Line westerly to the pumping plant of said Reclamation District No. 785, a distance of approximately one (1) mile; in said county of Yolo.

(c) That certain electric transmission line, consisting of poles, and wires, cross-arms, braces, pins and insulators installed thereon used to conduct electric energy having an electro-motive force of approximately eleven thousand (11,000) volts extending from its intersection with said Sacramento-Davis Tie Line near the point where said last mentioned line crosses the railroad right of way of the Sacramento-Woodland Railroad westerly to and upon the land of F. L. White, a distance of approximately three (3) miles, in said county of Yolo;



(d) All transformers, meters, switches and other electrical appliances installed upon or for use in connection with said electric transmission lines to be sold hereunder.

(e) All of the contracts which the party of the first part now has for the sale of electric energy to consumers who are supplied therewith by means of the electric lines to be sold and purchased pursuant to this agreement.

It appears that West Sacramento Electric desires to purchase the above described property for the purpose of improving its facilities and in order that it may more adequately serve present and future requirement in the territory in which it operates.

Inasmuch as the price agreed upon between applicant appears to be a fair value of the property involved, and because it further appears that public convenience and necessity will be better served by allowing the sale and purchase of said property as set forth in the application and permitting Pacific Gas and Electric Company to withdraw from said territory, I recommend that the application be granted and I submit the following form of order:

#### ORDER.

Pacific Gas and Electric Company and West Sacramento Electric having applied to this Commission for an order authorizing the sale by the former to the latter and the purchase by the latter from the former of certain distribution lines, equipment and apparatus in the eastern portion of Yolo County for the sum of five thousand (\$5,000) dollars said property being specifically referred to in the preceding opinion and more particularly described in Exhibit "A" attached to the petition in this proceeding, and a public hearing having been held on said application, and it appearing that public convenience and necessity will be better served by granting said application,

*It is hereby ordered* that Pacific Gas and Electric Company be and it is hereby authorized to sell said distribution lines, equipment and apparatus to West Sacramento Electric, and West Sacramento Electric is hereby authorized to purchase said property from Pacific Gas and Electric Company on the following conditions and not otherwise:

(1) The cash price to be paid for said property, free from all liens and incumbrances, shall not exceed the sum of five thousand (\$5,000) dollars.

(2) Said sum of five thousand (\$5,000) dollars shall not hereafter be used before this Commission, or any other public authority, as a basis for establishing or determining the present value of said property for rate fixing or any other purpose.

(3) The purchase of said property shall not be used by the West Sacramento Electric as a basis for increasing any rate or charge for electric service in the territory involved in the application.

(4) The purchase of the said property of Pacific Gas and Electric

Company by West Sacramento Electric shall be taken as a consent by the latter corporation to all the terms and conditions of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of May, 1913.

Decisions Nos. 671 and 672, grade crossings; not printed. See end of volume.

DECISION No. 673.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY TO EXECUTE A MORTGAGE OF ITS PROPERTY, TO ISSUE FIVE MILLION DOLLARS OF DEBENTURES, AND TO ISSUE COMMON STOCK IN EXCHANGE FOR SAID DEBENTURES.

Application No. 552.

*Decided May 15, 1913.*

Permission given applicant to issue 10-year 6 per cent convertible debentures in the face amount of \$5,000,000, to be sold at not less than 95 or pledged on a basis of not more than 125 per cent of the face value of loans, the proceeds to be used in reimbursing its treasury for income expended on capital construction in the sum of \$3,750,000 and for new construction in the sum of \$1,250,000; also permission given to the issue of such common stock at not less than 80, as may be required, under the terms of the debenture mortgage, in exchange for such debentures.

*Charles P. Cutten and W. B. Bosley, for Applicant.*

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application by Pacific Gas and Electric Company to execute a mortgage of its property to Savings Union Bank and Trust Company of San Francisco, as trustee, to secure an issue of \$5,000,000 of debentures; to issue \$5,000,000 of said debentures under its proposed mortgage; to pledge all or a portion of these debentures as collateral security for a loan or loans; and to issue its common stock in exchange for these debentures under that portion of the mortgage which provides for such conversion.

The affairs of the applicant herein have been reviewed in previous decisions by this Commission. In the application under consideration, Pacific Gas and Electric Company asks for authority to use the proceeds from the sale of the debentures for the purpose of reimbursing

its treasury for income expended upon capital construction in the amount of \$3,750,000, and for new construction work in the amount of \$1,250,000, making a total of \$5,000,000.

Applicant submits a statement showing that it has, in the last five years, expended from income for additions and betterments to its plant the sum of \$3,756,821.12. Applicant submits also a schedule of proposed new construction in the amount of \$10,319,934.85. The cost of this new construction is to be defrayed principally through future issues of applicant's general and refunding mortgage bonds. The mortgage under which the general and refunding bonds are authorized provides that such bonds may be issued up to only 90 per cent of the cost of the additions and betterments. It is the remaining 10 per cent which the applicant desires to defray from the proceeds from the sale of the debentures. For the present, however, applicant desires to use \$1,250,000 of debentures for such items of construction work, included in the total of \$10,319,934.85, as it may elect, and later to reimburse its debenture fund from the sale of its general and refunding mortgage bonds. While applicant submits at the present time a list of construction items to cost \$10,319,934.85, it states that it will require in addition, during the year 1913, \$4,000,000 for new construction arising out of the development of its business and the addition of new consumers. This sum of \$4,000,000 will be required principally for new distribution lines and pipes to provide electric and gas service for new patrons. A check of applicant's accounts shows, that it has expended, during the past five years, as stated, the sum of \$3,750,000 from income for additions and betterments to its plant. While a complete check has not been made of the items of new construction listed by applicant, a sufficient investigation has been made to warrant an order authorizing an issue at this time of the amount of debentures desired for new construction of a total of \$1,250,000. Such debentures in the sum of \$1,250,000 will provide for one tenth of the cost of new construction of a total amount of \$12,500,000.

Pacific Gas and Electric Company's outstanding bonded indebtedness, as of January 1, 1913, amounted to \$75,858,800. Against this, applicant claims property of a value in excess of \$100,000,000. Applicant submitted evidence to the effect that such appraisals as have been made indicate a value which will not be less than \$100,000,000. While, in the matter herein, I do not find a plant value in this amount or any other sum, I believe that sufficient evidence has been offered to warrant a conclusion that the applicant possesses property of a value reasonably in excess of the face value of its outstanding obligations. Applicant's balance for 1912 after all interest payments was \$2,616,275.83.

The debentures which the applicant asks for authority to issue are protected by a mortgage, although provision is made that additional debentures may share equally in the lien. The debentures which applicant proposes to issue run for ten years, maturing in 1923, and bear interest at 6 per cent. The mortgage under which they are to be issued provides:

(1) That the debentures may be issued for additions and betterments, etc., but not for operating expenses.

(2) That the debentures shall be convertible into the common stock of the company on the following basis:

Before June 1, 1917, at \$80 per share;

June 1, 1917, to June 1, 1919, at \$85 per share;

June 1, 1919, to June 1, 1921, at \$90 per share;

June 1, 1921, to June 1, 1923, at \$95 per share.

(3) That the debentures shall be callable on December 1 or June 1 of any year at 101.

(4) That the company shall have the right to issue, from time to time, upon vote of its stockholders, such further debentures as may be needed and that such additional debentures shall share equally in the lien with those now to be issued.

In accordance with the conversion feature, applicant asked for authority to issue its stock at such times as it may be necessary to such holders of debentures as may desire to convert them into stock. While applicant's common stock is now quoted in the market at \$52 per share, it has been quoted as high as \$70, and the applicant believes that there is reasonable expectation that the stock will, within the next ten years, reach a price that will invite conversion.

As a matter of general policy, I am strongly of the belief that public utility corporations should finance additions and betterments both through bonds and stock. In cases in which a corporation has an unusually large unbonded equity it may be the part of wisdom to issue bonds for the full amount of new construction. Where such is not the case, however, and a merely normal relationship exists between outstanding bonds and the value of the property, I believe utilities should be encouraged to raise their additional funds partly from bonds and partly from stock. The applicant herein, through its second vice president, has expressed its concurrence in this view and has voiced the belief that practically all of the debentures which it now asks the Commission to authorize will, before maturity, be converted into stock.

The applicant asks for authority to sell the \$5,000,000 of debentures at a price not less than 95, and states that if offer of sale is made the stockholders will be asked to subscribe for the debentures. At 95, the interest rate would be approximately 6½ per cent. This is higher

than applicant usually pays for its money and is explained by the general condition of the money market at this time. It is proposed, however, not to sell the debentures at this time but to wait until money conditions improve. In the mean while, it is the intention to pledge the debentures as collateral security for a loan or loans. If such loans are negotiated, the debentures will be pledged on a basis not less than 80.

I recommend that the application be granted and submit the following form of order:

**ORDER.**

Pacific Gas and Electric Company having made application to the Railroad Commission for authority to execute a mortgage of its property to Savings Union Bank and Trust Company of San Francisco, as trustee, to secure an issue of \$5,000,000 of 10-year 6 per cent debentures; to issue \$5,000,000 of said 10-year 6 per cent debentures, dated 1913 and maturing June 1, 1923, under said mortgage; to pledge said debentures as collateral security for a loan or loans; and to issue its common stock in exchange for said debentures as provided in said mortgage; and a hearing having been held; and it appearing that the purposes for which applicant proposes to issue said debentures and said stock are not, in whole or in part, chargeable to operating expenses or to income;

*It is hereby ordered* that Pacific Gas and Electric Company be authorized, and it is hereby authorized, to execute a debenture mortgage of its property to Savings Union Bank and Trust Company of San Francisco, as trustee, substantially in the form of such debenture mortgage filed with this Commission in the application herein and marked Exhibit "E"; and

*It is hereby ordered* that Pacific Gas and Electric Company be authorized, and it is hereby authorized, to issue \$5,000,000 of 10-year 6 per cent debentures under the terms and conditions as provided in its debenture mortgage to Savings Union Bank and Trust Company, dated 1913, filed with this Commission in the application herein and marked Exhibit "E"; and

*It is hereby ordered* that Pacific Gas and Electric Company be authorized, and it is hereby authorized, to issue such common stock as may be required in exchange for such debentures as are herein authorized to be issued.

Said \$5,000,000 of debentures and said stock herein authorized to be issued are authorized to be issued upon the following conditions and not otherwise:

(1) Said debentures may either be sold by the applicant herein or pledged as collateral security for a loan or loans.

(2) Said debentures, if sold, shall be sold at a price which shall

net to applicant not less than 95 per cent of the face value of said debentures plus accrued interest thereon.

(3) Said debentures, if pledged as collateral security for a loan or loans, shall be pledged on a basis of not more than 125 per cent of the face value of such loan or loans.

(4) The money realized from the sale or pledge of said debentures shall be used only for the following purposes:

|   |             |
|---|-------------|
| (a) To reimburse applicant's treasury for money expended from income during the past five years for capital construction...   | \$3,750,000 |
| (b) For such additions and betterments to applicant's plant as it may determine from the list of items of construction filed with this Commission in connection with the application herein and marked Exhibit "B"----- | 1,250,000   |
| Total -----   | \$5,000,000 |

(5) The stock herein authorized to be issued shall be issued only in exchange for said debentures herein authorized, and said stock shall be issued at not less than 80, and on such terms and conditions as are prescribed in applicant's debenture mortgage to Savings Union Bank and Trust Company, on file with this Commission in the application herein and marked Exhibit "E."

(6) The authority hereby given to issue said debentures shall apply to such debentures as shall be issued before December 31, 1913.

(7) Pacific Gas and Electric Company shall file with this Commission a statement of all debentures herein authorized to be issued which shall be pledged as collateral security for a loan or loans, the amount of debentures so pledged, the amount of the loan or loans secured thereby and the interest paid on such loans.

(8) Pacific Gas and Electric Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock and debentures hereby authorized to be issued, and on or before the twenty-fifth day of each month, it shall make verified reports to the Commission stating the sale or sales, pledge or conversion of said stock and debentures during the preceding month, the terms and conditions of sale, moneys or properties realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(9) This order shall become effective only after the payment of the fee prescribed by the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of May, 1913.

## DECISION No. 674.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY FOR AN ORDER AUTHORIZING IT TO EXECUTE A MORTGAGE AND DEED OF TRUST TO MERCANTILE TRUST COMPANY OF SAN FRANCISCO; AND TO SELL OR PLEDGE AS SECURITY THREE HUNDRED THOUSAND DOLLARS OF BONDS.

Application No. 368.

*Decided May 19, 1913.*

## REPORT OF THE COMMISSION.

## SUPPLEMENTAL ORDER.

Tulare County Power Company having applied to this Commission for an order authorizing applicant to issue promissory notes to the value of \$15,971, secured by its six per cent sinking fund bonds, and it appearing that applicant desires to issue these notes to refund certain outstanding notes hereafter specified, the proceeds of which were used in the construction of applicant's plant, and the Commission being duly advised in the premises;

*It is hereby ordered* that Tulare County Power Company be and it is hereby authorized to issue promissory notes to the face value of \$15,971 and to pledge as collateral for said notes its six per cent sinking fund bonds upon the following conditions, and not otherwise, to wit:

(1) The notes herein authorized to be issued shall be issued at a rate of interest not exceeding seven per cent, and the term of the notes herein authorized to be issued shall not extend beyond one year.

(2) The notes herein authorized to be issued shall be issued so as to net applicant the par value thereof.

(3) The proceeds from the notes herein authorized to be issued shall be used to pay the principal and interest which is still due, upon any of the following notes of applicant:

Note for \$4,141.75 payable to the Allis-Chalmers Manufacturing Company September 15, 1912.

Note for \$3,471.94 payable to the Allis-Chalmers Manufacturing Company October 4, 1912.

Note for \$6,425.00 payable to the Allis-Chalmers Manufacturing Company November 3, 1912.

Note for \$6,425.00 payable to the Allis-Chalmers Manufacturing Company December 3, 1912.

Note for \$732.78 payable to the Allis-Chalmers Manufacturing Company December 30, 1912.

Note for \$1,000.00 payable to the Allis-Chalmers Manufacturing Company January 30, 1913.

Note for \$1,000.00 payable to the Allis-Chalmers Manufacturing Company February 28, 1913.

Note for \$1,000.00 payable to the Allis-Chalmers Manufacturing Company March 30, 1913.

Note for \$3,888.69 payable to the Westinghouse Electric and Manufacturing Company, dated September 30, 1912, payable five days after date.

(4) The bonds herein authorized to be issued as collateral shall be pledged at not less than seventy-five per cent of the face value thereof.

By order of the Railroad Commission.

Dated at San Francisco, California, this 19th day of May, 1913.

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Decision No. 675, grade crossing; not printed. See end of volume.

DECISION No. 676.

IN THE MATTER OF THE APPLICATION OF HALFMOON  
BAY LIGHT AND POWER COMPANY FOR PERMISSION  
TO INCREASE CAPITALIZATION.

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Application No. 166.

*Decided May 19, 1913.*

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REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

This Commission having on October 3, 1912, made an order in this proceeding, authorizing applicant to increase its capital stock from \$25,000 to \$100,000, and authorizing the issuance of all of this stock upon certain conditions, and providing that the proceeds derived from the sale of this stock should be applied to certain purposes specified in said order; and Halfmoon Bay Light and Power Company having applied to this Commission for a modification of the order made October 3, 1912, so as to permit applicant to use a portion of the proceeds derived from the sale of the stock therein authorized to be issued, to reimburse applicant for moneys expended from income during the past year for purposes properly capitalizable, to the amount of \$1,165.05; and it appearing to the Commission that this application should be granted;

*It is hereby ordered* that Halfmoon Bay Light and Power Company be, and it is hereby authorized to use the proceeds derived from the



sale of stock authorized to be issued by this Commission's order in this proceeding made on October 3, 1912, to reimburse the treasury of applicant to the amount of \$1,165.05, which amount has been expended by applicant from income during the past year for purposes properly capitalizable, the authority herein granted being otherwise subject to all the conditions set forth in this Commission's order made on October 3, 1912.

By order of the Railroad Commission.

Dated at San Francisco, California, this 19th day of May, 1913.

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Decisions Nos. 677, 678 and 679, grade crossings; not printed. See end of volume.

DECISION No. 680.

IN THE MATTER OF THE APPLICATION OF JOHN B. McCLEARY TO SELL THE COLFAX TELEPHONE EXCHANGE TO CARL G. BELL AND JOHN L. BUTLER.

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Application No. 546.

*Decided May 22, 1913.*

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REPORT OF THE COMMISSION.

John B. McCleary having applied to this Commission for permission to sell to Carl G. Bell and John L. Butler, for the sum of \$2,000, the Colfax Telephone Exchange, situated in the city of Colfax, Placer County, California, which telephone exchange, as stated in the application,

“Consists of about forty-eight telephones, with connections with the Pacific Telephone and Telegraph Company; with the Colfax Suburban Telephone Company; and with two private lines, viz: The Pacific Gas and Electric and the Lime Kiln line; together with one half interest in a private line extending from Colfax to Iowa Hill, with all connections, permits, lines, poles and fixtures belonging and appertaining to the exchange.”

And Carl G. Bell and John L. Butler having joined in this application, and it appearing to the Commission that public convenience and necessity will be subserved by the transfer herein applied for, and that this is not a case in which a public hearing is necessary,

*It is hereby ordered* that John B. McCleary be and he is hereby authorized to sell, for the sum of \$2,000, the Colfax Telephone Exchange, as above described, and that Carl G. Bell and John L. Butler are hereby authorized to purchase said exchange upon the following condition, and not otherwise, to wit:

The price paid in consideration for the property herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate fixing or other purposes the value of the property transferred.

By order of the Railroad Commission.

Dated at San Francisco, California, this 22d day of May, 1913.

DECISION No. 681.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE CONSTRUCTION OF AN ELECTRIC DISTRIBUTING SYSTEM IN THE CITY OF BEAUMONT, CALIFORNIA, AND FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE CONSTRUCTION, MAINTENANCE AND OPERATION OF AN ELECTRIC DISTRIBUTING SYSTEM UNDER A CERTAIN FRANCHISE GRANTED BY SAID CITY OF BEAUMONT TO SAID SOUTHERN CALIFORNIA EDISON COMPANY.

Application No. 554.

*Decided May 22, 1913.*

REPORT OF THE COMMISSION.

Southern California Edison Company having applied to this Commission for a certificate declaring that public convenience and necessity require the exercise by applicant of the rights and privileges granted to it by Ordinance No. 16 of the city of Beaumont, State of California, adopted March 24, 1913, by which ordinance applicant is given the right to construct, maintain and operate an electrical system along public highways in the city of Beaumont;

And it appearing to the Commission that there is no other public utility of like character within the city of Beaumont, and that this is not a case in which a public hearing is necessary,

*It is hereby declared* that public convenience and necessity require the exercise by Southern California Edison Company of the rights and privileges granted to it in Ordinance No. 16 of the city of Beaumont, California, adopted March 24, 1913.

By order of the Railroad Commission.

Dated at San Francisco, California, this 22d day of May, 1913.

## DECISION No. 682.

## IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY FOR AUTHORITY TO ISSUE SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS OF PREFERRED STOCK.

Application No. 568.

*Decided May 22, 1913.*

Application for permission to issue and sell, at 80 per cent of par, \$750,000 of 6 per cent preferred capital stock and to use the proceeds for the payment of existing obligations and for additions and betterments. Applicant did not submit to the Commission an appraisal of its physical properties, and for the purposes of the proceeding herein a detailed valuation was not practicable, the Commission being of the opinion that such a valuation may be dispensed with for the reason that the sale of stock and the use of the proceeds for the purposes specified will serve to build up applicant's property and to reduce its indebtedness without adding to its fixed obligations. Application granted.

*A. C. Balch and William G. Kerckhoff, for Applicant.*

## REPORT OF THE COMMISSION.

EDGERTON and LOVELAND, *Commissioners.*

This is an application by Southern California Gas Company for authority to sell \$750,000 of its preferred stock at \$80 per share and to use the proceeds for the payment of existing obligations and for additions and betterments to its plant.

Applicant owns a gas plant in the city of Los Angeles and one in Colton, San Bernardino County. It distributes gas in Los Angeles County, including a portion of the city of Los Angeles; San Bernardino County; and Riverside County. Southern California Gas Company will act as the chief distributing agency for the natural gas from the Kern County fields which is soon to be introduced into Southern California by the Midway Gas Company. It also has contracts to develop natural gas for the Midway Gas Company.

In addition to its own outstanding obligations, it has guaranteed the bonds of the Midway Gas Company now outstanding to the amount of \$1,500,000.

The applicant herein has an authorized issue of \$4,000,000 of preferred stock and of \$6,000,000 of common stock. It has issued \$125,000 of preferred stock and \$6,000,000 of common stock. It now asks for authority to sell 7,500 shares of its preferred stock of the par value of \$100 per share. It proposes to sell this stock at \$80 per share. On behalf of the company it is stated that this is the best price obtainable and is regarded by applicant as an entirely satisfactory price in view of all the circumstances involved. The preferred stock is 6 per cent cumulative and preferred as to assets as well as to dividends.

The applicant has submitted a statement of earnings for the twelve

months ending March 31, 1913, showing a balance, after the payment of operating expenses and interest charges, of \$98,289.78. It reports earnings from other sources for the same period amounting to \$14,624.38, making a total of \$112,914.16 as the amount applicable to depreciation and dividends.

If applicant sells its stock at 80, it will realize \$600,000, which will be used in reducing its notes payable and in adding to its physical properties. It is the intention of the applicant herein to use the proceeds from the sale of its stock for the payment of outstanding obligations in the sum of \$214,665.03, leaving a balance to be used for additions and betterments amounting to \$385,335.

Applicant lists notes payable which it desires to discharge as follows:

| Date.         | Term.          | Name.                                | Rate. | Amount.      |
|---------------|----------------|--------------------------------------|-------|--------------|
| June 29, 1911 | -----          | Pacific Light and Power Corporation  | 6%    | \$15,000 00  |
| Oct. 11, 1912 | 1 day -----    | Farmers and Merchants' National Bank | 6%    | 50,000 00    |
| Aug. 1, 1912  | 1 year -----   | Munro Oil Co.                        | 6%    | 7,500 00     |
| Jan. 29, 1913 | 3 months ----- | Hope Engine and Supply Co.           | 6%    | 17,165 03    |
| Jan. 10, 1913 | 3 months ----- | Midway Gas Co.                       | 6%    | 75,000 00    |
| Jan. 13, 1913 | 1 day -----    | Farmers and Merchants' National Bank | 6%    | 50,000 00    |
|               |                |                                      |       | \$214,665 03 |

Applicant states also that it desires to apply the balance of \$385,335, so far as it may go, upon the following proposed additions to its plant:

|   |              |
|---|--------------|
| High pressure mains from Fullerton natural gas fields to Los Angeles, 22.2 miles, so constructed as to be used as an oil pipe line should necessity require ----- | \$175,000 00 |
| Compressor station at Midway oil fields, capacity 30,000,000 cubic feet per day -----   | 375,000 00   |
| Compressor station at Fullerton fields, daily capacity 12,000,000 cubic feet -----  | 135,000 00   |
|   | \$685,000 00 |

Applicant did not submit to the Commission an appraisal of its physical properties and for the purposes of the present case a detailed valuation was not practicable. I am of the opinion, however, that such a valuation may be dispensed with for the present for the reason that the sale of stock and the use of the proceeds in the payment of obligations and in making additions and betterments to applicant's plant will serve to build up its properties and to reduce its indebtedness without adding to its fixed obligations.

I find that the purposes for which the applicant herein desires to issue its stock are proper purposes under the terms and provisions of the Public Utilities Act. I find also that the money to be derived from the sale of the stock is reasonably required for the purposes to which applicant intends to apply it and that it is not, in whole or in part, reasonably chargeable to operating expenses or to income.

I suggest that the applicant furnish further details as to the additions and betterments for which it proposes to use the proceeds from the sale of its stock.

I recommend that the application be granted and submit the following order:

**ORDER.**

Southern California Gas Company having made application to this Commission for authority to issue 7,500 shares of its preferred 6 per cent cumulative stock of the par value of \$100 per share, and a public hearing having been held, and it appearing that the purposes for which it proposes to issue said stock are not, in whole or in part, reasonably chargeable to operating expenses or to income;

*It is hereby ordered* that Southern California Gas Company be authorized, and it is hereby authorized, to issue 7,500 shares of its preferred 6 per cent cumulative stock, said stock to be issued upon the following conditions and not otherwise:

(1) Said stock shall be sold so as to net Southern California Gas Company not less than \$80 per share.

(2) The proceeds from the sale of said stock shall be used for the following purposes only:

(a) Payment of the following notes:

| Date.         | Term.          | Name.                                | Rate. | Amount.             |
|---------------|----------------|--------------------------------------|-------|---------------------|
| June 29, 1911 | -----          | Pacific Light and Power Corporation  | 6%    | \$15,000 00         |
| Oct. 11, 1912 | 1 day -----    | Farmers and Merchants' National Bank | 6%    | 50,000 00           |
| Aug. 1, 1912  | 1 year -----   | Munro Oil Co.                        | 6%    | 7,500 00            |
| Jan. 29, 1913 | 3 months ----- | Hope Engine and Supply Co.           | 6%    | 17,165 03           |
| Jan. 10, 1913 | 3 months ----- | Midway Gas Co.                       | 6%    | 75,000 00           |
| Jan. 13, 1913 | 1 day -----    | Farmers and Merchants' National Bank | 6%    | 50,000 00           |
|               |                |                                      |       | <u>\$214,665 03</u> |

(b) And for the following additions and betterments to its plant, as far as the money may apply:

|   |                     |
|---|---------------------|
| High pressure mains from Fullerton natural gas fields to Los Angeles, 22.2 miles, so constructed as to be used as an oil pipe line should necessity require ----- | \$175,000 00        |
| Compressor station at Midway oil fields, capacity 30,000,000 cubic feet per day -----   | 375,000 00          |
| Compressor station at Fullerton fields, daily capacity 12,000,000 cubic feet -----  | 135,000 00          |
|   | <u>\$685,000 00</u> |

(3) Southern California Gas Company, before expending, upon additions and betterments to its plant, any of the proceeds from the sale of its stock hereby authorized, shall file with the Commission a detailed statement of such additions and betterments.

(4) Southern California Gas Company shall keep separate, true and

accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock hereby authorized to be issued, and on or before the twenty-fifth day of each month it shall make verified reports to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of sale, moneys or properties realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order; provided, however, that the applicant may deposit the funds received from the sale of its stock with any depository that may be approved by the Commission.

(5) The authority hereby granted shall apply only to stock issued on or before the 1st day of January, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of May, 1913.

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DECISION No. 683.

WILLIAM R. BOWKER

*vs.*

SAN DIEGO ELECTRIC RAILWAY COMPANY.

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Case No. 369.

*Decided May 24, 1913.*

Defendant, operating an electric railway and ferry between the city of San Diego and Coronado, a residential suburb, accords to residents of Coronado a special family commutation rate. Complainant, a resident of Coronado, urged, upon the ground of "justice and equity," that the failure of defendant to accord a like privilege to residents of the city of San Diego is a discrimination, and asked that the discrimination be removed by requiring defendant to put in a joint commutation ticket similar in character applying between San Diego and Coronado and return.

The Commission finding that the circumstances and conditions are not similar on the San Diego side as regards the need for the commutation rate to and from Coronado as to require such a commutation rate to be put in, dismissed the complaint.

*Wm. R. Bowker*, for Complainant.

*Harry L. Titus* and *Read G. Dilworth*, for Defendant.

REPORT OF THE COMMISSION.

*ESHLEMAN*, Commissioner.

The San Diego Electric Railway Company which owns the electric railways in San Diego and Coronado, and the San Diego and Coronado

Ferry Company, which operates between these two cities, maintain a joint special family commutation ticket good for fifteen round trips from any point on the line of the Coronado division of the San Diego Electric Railway Company to any point on the so-called ferry lines of the Electric Railway Company in San Diego, and sells such commutation ticket for \$1.50. The sale of such ticket is limited to bona fide residents of Coronado, and the time within which the same may be used is limited to fifty days. The complainant urges that the failure of the carriers involved to accord a like privilege to residents of the city of San Diego and to put in a commutation ticket of similar character applying from San Diego to Coronado and return is a discrimination and asks that the discrimination be removed by requiring the carriers to put in a joint commutation ticket similar in character applying between San Diego and Coronado and return. The carriers admit that the practice is discriminatory and ask leave to cancel the rate. The city of Coronado, while not appearing formally in the case, entered its protest against any change which will restrict the privilege which its citizens now have.

Witnesses in behalf of the carriers testified that this special ticket was put in for the purpose of encouraging residence in Coronado wherein Spreckels Brothers, who own the stock of these carriers, have other large interests. It is also urged that Coronado is strictly a residence city and that the residents of said city go regularly to San Diego, where for the most part their business interests are, while there is very little business carried on in Coronado and a very small amount of regular commutation traffic between San Diego and that city. The justification for the limitation of these commutation tickets to bona fide residents of Coronado is that the rate is very low, and that during the summer months a great number of tourists reside at Coronado and at Tent City, and if the carriers are required to accord to these tourists similar privileges to those accorded to the regular residents of Coronado that their revenues will be very seriously curtailed. In special justification of their position it is urged that the time limit of fifty days for fifteen round trips is so liberal that unless it were restricted all of the great number of summer residents, who are not the class for which commutation rates are usually or reasonably made, will be able to avail themselves of this rate.

The complainant, Bowker, does not disclose the reason for this action. He admits that he is a resident of Coronado and a regular patron of these carriers using the commutation ticket involved, and that the granting of the application would not benefit him, and if the removal of the discrimination would cause any change in the rate which he now has he does not desire to press his complaint. The sole justification for his position he gives as "justice and equity." The carriers

involved urge that there is some ulterior motive, but I do not consider it necessary to go into this question, inasmuch as any person whether interested or not has a legal right to complain of the rates or service of a utility. The position of the carriers to the effect that there are very few, if any, people in San Diego who could or would avail themselves of this rate if it were accorded seems to me to be justified both from a knowledge of the character of the two cities of Coronado and San Diego, which the evidence discloses, and the failure of any one in San Diego, either individually or officially, to bring this matter to the attention of the Commission or to join with Mr. Bowker in his suit. It is a little hard for me to understand just why this complainant is interested in having a commutation rate put in from a business city to a residence city and return under the state of facts here disclosed, and under conditions under which commutation rates are rarely put in and for which there is little demand, particularly when he is a patron of the carriers and avails himself of the commutation privilege in the reverse direction.

I do not at all agree with the carriers' admission that this commutation rate does amount to a discrimination against San Diego, and their offer to remove this discrimination by taking the privilege away from Coronado should not in my opinion be accepted, and the only thing to determine is whether the circumstances and conditions are sufficiently similar on the San Diego side as regards the need for the commutation rate to and from Coronado as to require such a commutation rate to be put in. To this end a check of the regular round trip travelers from the San Diego to Coronado side was required to be kept by the carriers, and it was found, just as one would expect, that comparatively few people go regularly to Coronado and return every day, and these are engaged in building work in Coronado, and the count shows that they are not permanently so engaged, but that on the completion of the particular job upon which they happen to be employed they ordinarily take other employment in San Diego; besides, with a very few exceptions, the origin of their trip to Coronado is outside the limit of the ferry lines, and therefore they could not avail themselves of this privilege were it required to be accorded.

I do not believe from the evidence in this case that Mr. Bowker has at all made out a case, and there being no question of the reasonableness of the rates themselves, and feeling that the present arrangement is one very advantageous to Coronado and not at all disadvantageous to San Diego, I recommend that the complaint be dismissed and submit the following order:



**ORDER.**

William R. Bowker having filed his complaint against the San Diego Electric Railway Company, and a hearing having been held and being fully apprised in the premises,

*It is hereby ordered* that the said complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of May, 1913.

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**DECISION No. 684.**

IN THE MATTER OF THE APPLICATION OF R. E. CAVANAUGH FOR PERMISSION TO SELL, AND CALIFORNIA-OREGON POWER COMPANY FOR PERMISSION TO BUY THE ELECTRIC LIGHT PLANT OWNED BY R. E. CAVANAUGH AT EDGEWOOD, SISKIYOU COUNTY, CALIFORNIA.

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Application No. 478.

*Decided May 24, 1913.*

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*R. E. Cavanaugh, in propria persona.*

*Morrison, Dunne & Brobeck, for California-Oregon Power Company.*

**REPORT OF THE COMMISSION.**

*ESHLEMAN, Commissioner.*

The applicant, R. E. Cavanaugh, owns a small electrical power and distributing plant serving Edgewood and adjacent territory in the county of Siskiyou, and according to the testimony, finds himself unable to make the necessary repairs and extensions to insure good service to his patrons and desires to sell his plant to the California-Oregon Power Company, which is an electrical corporation generating and distributing electricity for light and power purposes in southern Oregon and northern California. The price agreed upon between the parties is \$10,000.

Under all the circumstances of the case I believe the application should be granted with certain conditions set out in the order, and I submit the following order:

**ORDER.**

R. E. Cavanaugh, owner of an electric light plant serving the town of Edgewood and certain adjacent territory in the county of Siskiyou, having applied to sell such plant, and the California-Oregon Power

Company having applied to purchase the same, and a hearing having been held and being fully apprised in the premises,

*It is hereby ordered* that R. E. Cavanaugh be permitted to sell, and the California-Oregon Power Company be permitted to purchase all of said plant owned by R. E. Cavanaugh for the sum of \$10,000, subject to the following conditions:

1. The price of \$10,000 paid for this property shall not be binding upon this Commission or any other public authority in any rate-fixing inquiry.

2. This transfer shall not be used to increase any rates to the patrons of R. E. Cavanaugh; and the rates at which said R. E. Cavanaugh furnishes electricity to his patrons shall remain in effect until the Commission shall have determined whether or not the rates proposed by the California-Oregon Power Company are in excess of such rates when prevailing on the system of R. E. Cavanaugh; and any amount in excess of said rates heretofore collected shall be immediately refunded to the consumers from whom such excess has been collected.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of May, 1913.

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DECISION No. 685.

IN THE MATTER OF THE APPLICATION OF SISSON DEVELOPMENT COMPANY TO SELL, AND THE TOWN OF SISSON, A MUNICIPAL CORPORATION, TO PURCHASE THE PLANT OF SISSON DEVELOPMENT COMPANY.

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Application No. 402.

*Decided May 24, 1913.*

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Town of Sisson given permission unconditionally to purchase the private water system with which only inhabitants of the town are served.

*L. F. Coburn*, city attorney, for Applicants.

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REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

This is an application on the part of the town of Sisson, in Siskiyou County, for permission to purchase the plant of the Sisson Development Company, a water corporation serving the inhabitants of the town of Sisson. The agreed price is \$12,000. There are no consumers outside the town of Sisson taking water from this system and there seems to be no reason if the city desires to purchase this plant it should not

be permitted to do so unconditionally. If, however, the town after acquiring the plant undertakes to furnish consumers outside the limits of the municipality, it, of course, will be subject to the jurisdiction of this Commission with reference to such service.

The applicant, Sisson Development Company, is selling its entire plant and will disincorporate and go out of business.

I recommend the application be granted, and submit the following order:

**ORDER.**

The town of Sisson, a municipal corporation, located in the county of Siskiyou, having applied to this Commission to purchase, and the Sisson Development Company, a corporation, having applied to sell all the property of said Sisson Development Company, being its water system used and useful for furnishing water to the town of Sisson, and a hearing having been held and being duly apprised in the premises,

*It is hereby ordered* that the said town of Sisson be permitted to purchase, and the Sisson Development Company be permitted to sell said plant for the agreed price of \$12,000.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of May, 1913.

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DECISION No. 686.

IN THE MATTER OF THE APPLICATION OF GEORGE H. JOHNSON, FOR PERMISSION TO SELL, AND OF CALIFORNIA-OREGON POWER COMPANY FOR PERMISSION TO BUY THE PLANT OWNED BY SAID GEORGE H. JOHNSON, SUPPLYING ELECTRIC LIGHT AND POWER TO THE TOWN OF SISSON.

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Application No. 477.

*Decided May 24, 1913.*

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Permission given to the sale of a certain electric plant and distribution system operated in the town of Sisson and adjacent territory upon condition (a) that the purchase price shall not be held as binding upon the Commission, or any other public authority, in any rate-fixing inquiry; and (b) that the rates heretofore charged by the vendor company shall remain in effect pending an investigation thereof by the Commission.

*George H. Johnson, in propria persona.*

*Morrison, Dunne & Brobeck, for California-Oregon Power Company.*

## REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

George H. Johnson, one of the applicants herein, owns a small electrical plant supplying approximately 200 consumers within the town of Sisson, county of Siskiyou. The town is increasing in population and the system is now becoming inadequate for the needs of its patrons.

California-Oregon Power Company is a corporation developing and distributing electrical energy in southern Oregon and northern California and is now distributing electricity within Siskiyou County.

Applicant Johnson desires to dispose of his system to the California-Oregon Power Company for a consideration of \$15,000, and I believe the application should be granted with the proper conditions annexed. The engineers of the Commission report that the price of \$15,000 is somewhat excessive, but if such a price is not used for rate fixing purposes I believe the improvement of the service, which should be brought about by the substitution of better facilities in the control of the California-Oregon Power Company, makes it advantageous from the public standpoint for the transfer to be made.

The California-Oregon Power Company desires to put in the rates which prevail in its system throughout northern California and southern Oregon but this should not be permitted unless such rates are substantially the same as the rates which are now accorded to the people of Sisson by George H. Johnson. There is a dispute between the applicant and the town of Sisson as to whether or not the standard rates of the California-Oregon Power Company are lower than those heretofore accorded to the town of Sisson, and the said town is withholding payment of certain claims presented on the basis of the California-Oregon Power Company's rates, on the ground that such claims if computed on the basis of the rates of George H. Johnson, the present owner of the system, would represent a less amount.

I recommend that the application be granted subject to the conditions set out in the order, and submit the following order:

**ORDER.**

George H. Johnson having applied to sell, and the California-Oregon Power Company having applied to purchase, all of the plant owned by said George H. Johnson at and near the town of Sisson, in the county of Siskiyou, for the sum of \$15,000, and a hearing having been held and being fully apprised in the premises,

*It is hereby ordered*, that George H. Johnson be permitted to sell, and the California-Oregon Power Company be permitted to purchase, all of the plant owned by George H. Johnson used and useful for supplying electricity to the town of Sisson and adjacent territory for the sum of \$15,000. This order is made subject to the following conditions:

1. The price of \$15,000 agreed upon shall not be held as binding upon this Commission, or any other public authority, in any rate-fixing inquiry.

2. This transfer shall not be used to increase any of the rates to be charged to the patrons of George H. Johnson; and if, after analysis by this Commission, the rates offered by the California-Oregon Power Company to be charged to the patrons which have heretofore taken service from the system of George H. Johnson shall be found to be in excess of the rates heretofore accorded by said George H. Johnson to said patrons, then the lower rate accorded by said George H. Johnson shall be made to apply, and any greater amount heretofore collected by the said California-Oregon Power Company shall in each instance be refunded on the order of this Commission; and pending a determination of this question the rates heretofore charged by said George H. Johnson shall be and remain in effect as the only legal rates to be charged by the California-Oregon Power Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of May, 1913.

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Decisions Nos. 687, 688, 689 and 690, grade crossings; not printed. See end of volume.

DECISION No. 691.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING IT TO PURCHASE FROM THE PACIFIC ELECTRIC RAILWAY COMPANY THE ELECTRIC DISTRIBUTING SYSTEM OF THE PACIFIC ELECTRIC RAILWAY COMPANY IN GARDENA, MONETA, CLIFTON AND REDONDO BEACH, LOS ANGELES COUNTY, CALIFORNIA.

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Application No. 471.

*Decided May 24, 1913.*

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Permission given to the sale of certain electrical distribution lines in and about the towns and cities of Gardena, Moneta, Clifton and Redondo Beach, Los Angeles County, upon the condition that the purchase price shall not be taken before the Commission, nor any other public body, as representing, for rate fixing or other purposes, the value of the property transferred.

## REPORT OF THE COMMISSION.

Pacific Electric Railway Company having applied to this Commission for permission to sell to Southern California Edison Company, for the sum of \$17,500, certain electrical distributing lines in and about the towns and cities of Gardena, Moneta, Clifton and Redondo Beach, in the county of Los Angeles, State of California, a detailed description of the property to be transferred being attached to the application in this proceeding and marked "Exhibit B";

And Southern California Edison Company having joined in this application, and it appearing to the Commission that public convenience and necessity will be subserved by the transfer herein applied for, and also that this is not a case in which a public hearing is necessary;

*It is hereby ordered* that Pacific Electric Railway Company be and it hereby is authorized to sell, for the sum of \$17,500, certain distributing lines in and about the towns and cities of Gardena, Moneta, Clifton and Redondo Beach, in the county of Los Angeles, State of California, which property is more particularly described and listed in "Exhibit B" attached to the application in this proceeding, and that Southern California Edison Company be and it is hereby authorized to purchase said property upon the following condition and not otherwise, to wit:

The price paid in consideration for the property herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate-fixing or other purposes the value of the property transferred.

By order of the Railroad Commission.

Dated at San Francisco, California, this 24th day of May, 1913.

## DECISION No. 692.

IN THE MATTER OF THE ONE-WAY, ROUND TRIP AND COMMUTATION FARES AND THE RULES AND REGULATIONS AFFECTING THE SAME OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY FOR THE TRANSPORTATION OF PASSENGERS BETWEEN ALL POINTS ON THE SOUTHERN DIVISION OF SAID NORTHWESTERN PACIFIC RAILROAD COMPANY, AND THE PRACTICE OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY IN CHARGING FOR THE TRANSPORTATION OF PASSENGERS FARES LESS THAN THE FARES PROVIDED IN ITS PASSENGER FARE SCHEDULES ON FILE WITH THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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Case No. 333.

*Decided May 24, 1913.*

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## REPORT OF THE COMMISSION.

**ORDER DENYING APPLICATION FOR MODIFICATION OF ORDER.**

Northwestern Pacific Railroad Company having filed with this Commission its application for an order suspending the operation of paragraph 5 of its order heretofore, on the 14th day of May, 1913, entered in the above entitled proceeding, in so far as said paragraph refers to the collection of additional train fares in that portion of applicant's southern division not designated and referred to in paragraphs 2 and 3 of said order, and no good reason appearing to the Commission for the suspension of said order in said respects,

*It is hereby ordered* that said application be and the same is hereby denied.

Dated at San Francisco, California, this 24th day of May, 1913.

## DECISION No. 693.

IN THE MATTER OF THE APPLICATION OF CARMEL DEVELOPMENT COMPANY AND THE MONTEREY COUNTY WATER WORKS FOR AN ORDER AUTHORIZING THE FORMER TO SELL ITS WATER PLANT AND WATER BUSINESS TO THE LATTER.

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Application No. 570

*Decided May 27, 1913.*

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## REPORT OF THE COMMISSION.

Carmel Development Company having applied to this Commission for permission to sell to the Monterey County Water Works, for the sum of \$12,500, all of its water system used in supplying water to the inhabitants of Carmel City, Carmel-by-the-Sea and additions thereto, the property to be transferred being described in detail in the agreement of sale attached to the application and marked "Exhibit A," and the Monterey County Water Works having joined in this application, and it appearing to the Commission that public convenience will be subserved by the granting of this application, and that this is not a case in which a public hearing is necessary,

*It is hereby ordered* that Carmel Development Company be and it hereby is authorized to sell to the Monterey County Water Works, for the sum of \$12,500, its water system used in supplying water to the inhabitants of Carmel City, Carmel-by-the-Sea and additions thereto, said property being described in the agreement of sale attached to the application in this proceeding and marked "Exhibit A," and that the Monterey County Water Works be and it hereby is authorized to purchase said property upon the following condition and not otherwise, to wit:

The price paid in consideration for the property herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate fixing or other purposes the value of the property transferred.

By order of the Railroad Commission.

Dated at San Francisco, California, this 27th day of May, 1913.



## DECISION No. 694.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS THE INTERSECTION OF SECOND AND BRANNAN STREETS, SOUTH PARK, AND THE TRACKS OF UNITED RAILROADS OF SAN FRANCISCO, IN THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA.

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Application No. 537.

*Decided May 24, 1913.*

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*H. C. Booth*, for Southern Pacific Company.

*Wm. M. Abbott*, for United Railroads of San Francisco.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application of Southern Pacific Company for an order of this Commission authorizing the construction of a spur track at grade across the intersection of Second and Brannan streets, South Park, and the tracks of United Railroads of San Francisco, at the intersection of Second and Brannan streets in the city and county of San Francisco, California, to serve the warehouse now being constructed by Nat Raphael on the west side of Second street, between Brannan and South Park. Attached to the application is a copy of a franchise or permit granted by the board of supervisors, city and county of San Francisco, granting permission to construct said spur track on Second street. There was also filed with the Commission a copy of a proposed contract between the Southern Pacific Company and the United Railroads of San Francisco, providing for the installation, operation and maintenance of said spur at grade over the tracks of the United Railroads of San Francisco. This proposed contract provides that in case of accident at this crossing each company should bear and pay all loss, injury and damage to its own property or property in its custody and which its passengers or employees may have suffered by reason thereof. The United Railroads of San Francisco objected to this provision in the contract and desired to have substituted that all damages should be borne equally by the parties found to be jointly liable. A hearing was held by the Commission at San Francisco, California, on May 19, 1913, at which the interested parties were duly represented and testimony was taken concerning the matters contained in the application and also as to the manner of apportioning damage claims between the two (2) companies. No objection was made as to the manner of installation, operation and maintenance of the crossing of this spur track with track

of the United Railroads of San Francisco, other than as pertained to the settlement of damages as aforesaid.

I find as a fact that it is impracticable to construct this spur track other than at grade as applied for. This Commission has the authority to say whether or not this crossing may be made and to prescribe the terms of its installation, operation and maintenance, but this Commission does not have the authority to prescribe the manner in which damages shall be apportioned between the two (2) companies as the result of an accident at this crossing.

I recommend that the application be granted and submit herewith the following form of order:

**ORDER.**

Southern Pacific Company, a corporation, having on May 2, 1913, filed with the Commission an application for permission to construct its spur line track at grade across the intersection of Second and Brannan streets, South Park, and also at grade across the tracks of United Railroads of San Francisco at the intersection of Second and Brannan streets in the city and county of San Francisco, California, and a hearing having been held by the Commission at San Francisco, California, on May 19, 1913, at which the interested parties were duly represented and testimony having been taken concerning the matters contained in the application, and it appearing to the Commission that the board of supervisors of the city and county of San Francisco has granted the necessary franchise or permit for the construction of said spur track, and it further appearing to the Commission that it is not reasonable nor practicable to avoid grade crossings of the track of applicant with said streets and the tracks of United Railroads of San Francisco and that the application should be granted subject to the conditions hereinafter specified,

*It is hereby ordered* that permission be hereby granted Southern Pacific Company to cross at grade with its spur line track at the intersection of Second and Brannan streets, South Park, and the tracks of United Railroads of San Francisco at the intersection of Second and Brannan streets in the city and county of San Francisco, California, as prayed for in the application and as shown by the maps attached thereto, subject to the following conditions, viz:

(1) The entire expense of constructing the crossings, together with the cost of their maintenance hereafter in good and safe condition, shall be borne by applicant.

(2) All overhead wires or obstructions constructed at the crossings shall have a clearance above the rails of not less than twenty-two (22) feet. All pole lines and other side obstructions shall have a clearance from the center line of the track of either company of not less than eight (8) feet.

(3) All street paving disturbed in the installation of the crossings and track at the intersection of Second and Brannan streets and at South Park shall be restored in as good condition as before installation of said crossings and track and in every way be made safe for the passage thereover of vehicles and other street traffic.

(4) No engine, motor, train or car owned or operated by applicant shall be permitted to pass over the crossings without first coming to a full stop within one hundred (100) feet thereof and shall not proceed thereover until the conductor, watchman or other employee of applicant shall have gone upon the crossings and ascertained that it is safe to do so. United Railroads of San Francisco may operate its engines, motors, trains or cars over the crossing without stopping, provided, that they shall approach and pass over said crossings under full control.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of May, 1913.

Decisions Nos. 695 and 696, grade crossings; not printed. See end of volume.

#### DECISION No. 697.

### IN THE MATTER OF THE APPLICATION OF THE NORTHERN WAREHOUSE COMPANY FOR AN ORDER AUTHORIZING THE INCREASE OF STORAGE AND LOADING CHARGES.

Application No 72.

*Decided May 28, 1913.*

Approval given to an increase in rates for storage of grain from monthly charges aggregating \$3.75 per year to monthly charges aggregating \$4.00 per year and denial entered with respect to increases of charges for handling grain at applicant's warehouse and for delivering grain to wagons and loading on cars.

*Held.* As it has been shown that eight years' operation of this warehouse has resulted in the loss of \$1,197.92, it can not be expected that the average amount of grain stored will produce an unduly high profit to the warehouse owners, and it must be conceded that the slight increase in storage rates is justified, particularly in view of the fact that compared to the storage rates at other warehouses in the locality, the rates now in effect for applicant's warehouse are low.

*Frank Freeman and G. A. Gutman, for Applicant.*

## REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application to increase the rates for the storage and handling of grain in the warehouse located at Germantown, operated by the Northern Warehouse Company.

The present rates are as follows:

Storage for the first month 25 cents per ton.  
 Storage thereafter 25 cents per ton additional to October 1st.  
 Storage thereafter 25 cents per ton additional to June 1st of following year.  
 Delivery to wagon 15 cents per ton.  
 Loading on car 15 cents per ton.

The proposed rates are:

Storage to October 1st 50 cents per ton.  
 Storage thereafter 25 cents per ton to June 1st of following year.  
 Delivery to wagon 25 cents per ton.  
 Loading on car 25 cents per ton.

The grain crop is usually all stored during the months of June and July, and the storage "season" runs from June 1st of one year to June 1st of the following year. Therefore, the increase in the rates for storage, if permitted, will affect only grain removed from the warehouse prior to the expiration of the first storage month, but it is proposed to increase the loading charge in all cases.

In justification of the proposed increases, the applicant alleges that the cost of labor has increased; that the amount of grain stored has decreased owing to the fact that crops have changed from wheat to barley and that large tracts of land formerly devoted to the growing of grain have been subdivided and put to other uses, and as a consequence the business has been conducted at a loss. In support of this contention, applicant submits that in the past eight years there has been a net loss of \$1,197.92, as follows:

|                                      | Net loss.         | Net profit.       |
|--------------------------------------|-------------------|-------------------|
| 1904 -----                           | \$929 59          | -----             |
| 1905 -----                           | 1,693 04          | -----             |
| 1906 -----                           | 595 34            | -----             |
| 1907 -----                           | 556 29            | -----             |
| 1908 -----                           | 935 01            | -----             |
| 1909 -----                           |                   | \$73 31           |
| 1910 -----                           |                   | 757 67            |
| 1911 -----                           |                   | 2,680 37          |
| <b>Totals -----</b>                  | <b>\$4,709 27</b> | <b>\$3,511 35</b> |
| <b>Loss, eight years—\$1,197.92.</b> |                   |                   |

The statement of the expenses for conducting the warehouse, submitted in compliance with the Commission's request, shows:

|                                  |            |
|----------------------------------|------------|
| Total expense for year 1909..... | \$2,594 75 |
| Total expense for year 1910..... | 3,454 64   |
| Total expense for year 1911..... | 4,268 26   |

The largest item of expense is labor, which varies with the amount of grain stored. The fixed charges are: Annual rental of \$1,000; an annual corporation tax of \$10, and the salary of the manager. The propriety of charging some of the expenses, shown in statement, to the operation of the warehouse was questioned, but in view of the conclusions herein, this may be disregarded.

A decided protest was made against the proposed increase by a number of farmers who store their grain crops in the Germantown warehouse.

The evidence shows that the expense of handling the grain was materially decreased due to the substitution of machinery for manual labor. A witness for the applicant stated that this expense had decreased to "some extent," but that he was unable to state definitely the exact percentage of such decrease. The same witness testified that there had been an increase in the yield and amount of grain stored in the last two years, and that he did not believe the acreage devoted to the growing of grain in the vicinity of Germantown had decreased. Similar testimony was given by various witnesses who appeared to protest against the proposed increases, and it does not appear from the evidence that there is any present prospect of decrease in storage revenue because of abandonment of grain farming.

The profit for the year 1911 was approximately 38 per cent of the total revenue. The applicant admitted that that was a fair and satisfactory profit. Manifestly, therefore, the rate must be satisfactory if a large amount of grain is stored. If the present rates produce a reasonable net income in years of large crops, it may be that they would not during lean years, because, of course, the fixed charges would accrue regardless of the amount of grain placed in storage. On the other hand, in the years of bumper crops the present rates might produce an unreasonably large net income. This is a condition which is dependable on the yield alone and which can not be remedied by an increase in the rates for storage. A total crop failure, no matter what the rates for storage might be, would make the operation of the warehouse unprofitable. It appears, therefore, that to properly adjust the rates, the results from the operations over a period of years must be considered and not the results from one year's operation alone, and that a rate should be established that will yield sufficient returns in years of large crops to provide not only for a fair return for that year's operation, but also sufficient to compensate for the lean years. It should not be expected to entirely recoup in one year the losses of several.

As has heretofore been said, the proposed increase in storage rates will affect only those who remove their grain during the first month of storage, and while this new rate would result in payment of the comparatively heavy rate of 50 cents per ton for grain stored for less than

one month, yet it must be borne in mind that the warehouse is maintained so that the person storing shall have the opportunity to continue such storage for a whole year if to his advantage. Hence, it is fair that those who find a market for their grain soon after storing bear a reasonable proportion of the burden of maintaining this warehouse for the whole period during which storage is available.

As it has been shown that eight years' operation of this warehouse has resulted in the loss of \$1,197.92, it can not be expected that the average amount of grain stored will produce an unduly high profit to the warehouse owners, and it must be conceded that the slight increase in storage rates is justified, particularly in view of the fact that compared to the storage rates at other warehouses in the locality, the rates now in effect for applicant's warehouse are low.

The accounts of the warehouse are not segregated so as to show the receipts and expenses for loading, separate from other receipts and expenses, and the result of the last year's operation embraces the results from loading. No sufficient evidence was presented at the hearing to show that the present charge for loading grain into wagons or cars is too low, and I therefore, hold that the present charge for such service is not unduly low.

Therefore, I am of the opinion that the application should be granted as to the proposed increase in storage rates and denied as to the proposed increase in handling charges, and submit herewith the following form of order:

**ORDER.**

The Northern Warehouse Company having applied to the Railroad Commission for an order authorizing increases in the rates for the storage and handling of grain in its warehouse, located at Germantown, California, and a hearing having been held upon said application, and the Commission being fully advised in the premises,

It is hereby found as a fact that the rates now in force for the storage of grain in the warehouse of the Northern Warehouse Company are unduly low and are unjust and unreasonable rates, and that the following rates for said services by said company are just and reasonable rates, to wit:

Storage to October 1st, 50 cents per ton.

Storage thereafter, to June 1st of following year, 25 cents per ton.

It is hereby further found as a fact that the rates proposed to be established by applicant for handling grain at said warehouse are unjust and unreasonable, and that the following rates now being charged for such services are just and reasonable rates, to wit:

Delivery to wagon, 15 cents per ton.

Loading on car, 15 cents per ton.

*It is hereby ordered* that the application of the Northern Warehouse Company to increase the rates for storage of grain, which said rates have hereinbefore been found just and reasonable, is hereby granted; and

*It is hereby ordered* that the application of the Northern Warehouse Company to increase the rates for delivering grain to wagons and loading grain on car, said proposed increase having hereinbefore been found unjust and unreasonable, is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of May, 1913.

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DECISION No. 698.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY AND WEST SACRAMENTO ELECTRIC FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING THE PACIFIC GAS AND ELECTRIC COMPANY TO SELL, GRANT AND TRANSFER TO THE WEST SACRAMENTO ELECTRIC PORTIONS OF ITS TRANSMISSION AND DISTRIBUTION LINES AND CERTAIN OF ITS TRANSFORMERS, SWITCHES AND OTHER ELECTRICAL APPLIANCES AND OTHER PERSONAL PROPERTY DESCRIBED IN DETAIL IN THAT CERTAIN AGREEMENT OF SALE DATED DECEMBER 27, 1912.

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Application No. 521.

*Decided May 28, 1913.*

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Order amending original order to enable the parties to conform with the provisions of a pre-application agreement in regard to liens and incumbrances upon the property transferred.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

SUPPLEMENTAL OPINION.

In the order issued on May 15, 1913, in the application herein, Pacific Gas and Electric Company was authorized to sell certain distribution lines, equipment and apparatus to West Sacramento Electric, and West Sacramento Electric was authorized to purchase the same on certain conditions which were enumerated in said order. The first condition enumerated provided—

"1. The cash price to be paid for said property, free from all liens and incumbrances, shall not exceed the sum of five thousand (\$5,000) dollars."

It now appears that the agreement of sale between Pacific Gas and Electric Company and West Sacramento Electric contains the following provision in regard to liens and incumbrances upon the said distribution lines, equipment and apparatus—

"2. All of the property to be sold and purchased hereunder shall be sold and purchased subject to the lien, charge and operation of any and all existing mortgages or deeds of trust executed by the party of the first part or any of its predecessors in interest or estate to secure the payment of bonds authorized to be issued by the party of the first part, or any of its said predecessors. The party of the first part hereby covenants with the party of the second part to perform all and singular its covenants and promises and to comply with all and singular the terms and conditions set forth and contained in each of the said mortgages or deeds of trust, and to pay at or before maturity all and singular the debts and obligations, payment whereof is secured by any of said mortgages or deeds of trust, and thereupon to cause each of said mortgages or deeds of trust to be promptly discharged and released and the property to be sold and purchased hereunder released from the operation thereof and reconveyed, and, in the event of its failing so to do, to indemnify and save harmless the party of the second part from and against any and all loss, damage and liability which the party of the second part shall or may sustain or incur for or by reason of any default on the part of the party of the first part in performing all or any of its covenants herein contained."

In view of this fact an amendment of the original order in this case will be necessary in order to enable the parties to carry out the transaction according to the agreement entered into between them.

I, therefore, submit the following supplemental order:

**SUPPLEMENTAL ORDER.**

*It is hereby ordered* that the order of this Commission, dated May 15, 1913, in Application No. 521, be amended by changing condition (1) which appears in said decision as follows:

"(1) The cash price to be paid for said property, free from all liens and incumbrances, shall not exceed the sum of five thousand (\$5,000) dollars."

to read as follows:

"(1) Said property may be sold and conveyed under and in accordance with the terms, provisions and covenants contained in the agreement of sale executed by the applicants, dated the 27th



day of December, 1912, at a cash price not to exceed the sum of five thousand (\$5,000) dollars."

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of May, 1913.

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Decision No. 699, grade crossing; not printed. See end of volume.

DECISION No. 700.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR AN ORDER AUTHORIZING SAID COMPANY TO PROCEED TO THE COMPLETION OF ITS WORK IN THE COUNTY OF RIVERSIDE, OUTSIDE THE LIMITS OF INCORPORATED CITIES AND TOWNS, UNDER FRANCHISE FROM BOARD OF SUPERVISORS OF RIVERSIDE COUNTY.

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Application No. 574.

*Decided June 2, 1913.*

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Applicant asks permission of Commission to proceed to the completion of work in Riverside County outside limits of incorporated cities under franchise granted by board of supervisors by Ordinance No. 108.

*Held*, Applicant having begun actual construction work prior to the 23d day of March, 1912, application granted, subject to such rules and regulations as the Commission may from time to time prescribe.

*Charles F. Potter and Isaac B. Potter*, for Applicant.

*Harry J. Bauer*, for Southern California Edison Company.

REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application for an order authorizing The Southern Sierras Power Company to proceed to the completion of work under a franchise granted to Fred B. Meehling by Ordinance No. 108 of the board of supervisors of Riverside County, on July 17, 1911, and thereafter assigned by Meehling to the present applicant.

The ordinance grants the right to erect, construct, operate and maintain for the period of fifty years an electric pole, tower and wire system, consisting of poles, towers, wires, and all other apparatus and appliances necessary or convenient for transmitting electricity, electrical energy, light, heat and power, over, along and upon all the public roads and highways in the county of Riverside, outside of incorporated cities and towns, for light, heat and power purposes and for any other

purpose to which electricity may be applied, and to distribute the same. The ordinance provides that the work shall commence within four months and be completed within three years. As usual under the Broughton Act, a payment to the grantor of two per cent of the gross annual receipts after five years is provided for. The ordinance contains other provisions by the Broughton Act and establishes specifications for the construction of the work to be performed under its terms.

The application is made under the proviso in section 50b of the Public Utilities Act, reading as follows:

*“Provided, that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly, and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted, but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may after such completion, exercise such right or privilege.”*

The affidavits attached to the petition show that considerable work was done under this franchise prior to March 23, 1912, the effective date of the Public Utilities Act, and that the construction work under said franchise has been prosecuted in good faith, uninterruptedly, and with reasonable diligence in proportion to the magnitude of the undertaking.

The Southern California Edison Company was represented at the public hearing and its attorney stated that his company has no objection to the granting of the application. The proceeding seems to fall squarely within this Commission's decision on Application No. 485, Decision No. 582, in which matter the Commission, on the application of The Southern Sierras Power Company, made a similar order as to San Bernardino County.

I recommend that the application be granted, and that the applicant be authorized to proceed to the completion of its work under said franchise, under such rules and regulations as the Commission may from time to time prescribe.

I submit the following form of order:

#### ORDER.

The Southern Sierras Power Company having filed with this Commission its application for an order authorizing it to proceed to the completion of work in Riverside County, outside of incorporated cities and towns, under franchise granted by Ordinance No. 108 of the board of supervisors of said Riverside County on July 17, 1911, and a public hearing having been held on said application,

The Railroad Commission hereby finds as a fact, that The Southern Sierras Power Company, a public utility, prior to the 23d day of March, 1912, began actual construction work in the county of Riverside, and

subsequently thereto has prosecuted such work in good faith, uninterruptedly, and with reasonable diligence in proportion to the magnitude of the undertaking, under a franchise theretofore granted to Fred B. Mechling by the board of supervisors of said Riverside County by Ordinance No. 108, and thereafter by him assigned to The Southern Sierras Power Company, and that said franchise was not prior to March 23, 1912, actually exercised by said company; and, basing its order on the foregoing findings of fact and on the further findings contained in the opinion which precedes this order,

*It is hereby ordered* that The Southern Sierras Power Company is hereby permitted to proceed to the completion of its work in said Riverside County to the extent permitted by said franchise, subject to such rules and regulations as this Commission may, from time to time, prescribe.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of June, 1913.

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Decision No. 701, grade crossing; not printed. See end of volume.

DECISION No. 702.

QUINCY CHAMBER OF COMMERCE  
*vs.*  
 WESTERN UNION TELEGRAPH COMPANY.

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Case No. 378.

*Decided June 5, 1913.*

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Complaint of the Quincy Chamber of Commerce against the telegraph service of the Western Union Telegraph Company at Quincy.

**Held,** That while defendant should not be required to maintain an independent agency at Quincy, defendant is required to install sound-proof telephone booth and otherwise improve telephone line from Quincy to Marston.

*J. D. McLaughlin*, for Complainant.

*Beverly L. Hodghead*, for Defendant.

REPORT OF THE COMMISSION.

ESHLEMAN and LOVELAND, *Commissioners*.

On March 21st the complaint in this case was filed, wherein it was alleged that the defendant has no office in the town of Quincy, and that said town has no telegraphic communication with the outside

world, except over the line of the California and Oregon Telegraph Company by way of Susanville and Reno, thus subjecting the people of Quincy to a double toll over the said California and Oregon Telegraph Company to Reno and thence over the Western Union.

The defendant maintains a telegraph line along the line of the Western Pacific passing through Marston, which is in the neighborhood of four miles from Quincy, and the complainant demands that an office be established in Quincy by the defendant, and that a line be constructed thence to Marston to connect with the main transcontinental line of the defendant.

Subsequent to the filing of the complaint the defendant arranged with the Quincy Western Railway Company to telephone messages from Quincy to Marston over the telephone line of said Quincy Western Railway Company, and the messages are sent thence by telegraph to their destination. The complainant attacks this service as being inadequate for the reason that the telephone line used by the defendant is inefficient and subject to interference by farmer line telephones in the vicinity of Quincy; and furthermore, that the messages are telephoned from the Quincy office to the Quincy Western Railway Company in an open room and that no privacy is maintained. The Western Union admits the deficiency complained of and agrees to put in a sound-proof booth at Quincy, and likewise, in conjunction with the Quincy Western Railway Company, to reconstruct the telephone line from Quincy to Marston. This company objects, however, to maintaining an office in Quincy other than in conjunction with the Quincy Western Railway Company because of the fact that the returns from this office are not sufficient to pay for an independent agent. The testimony shows that the defendant secures out of messages sent from Reno as its division of the rate over the California and Oregon Telegraph Company's line and its own the same amount as it would receive for the same message if delivered to it at Marston, and on this basis during the last year the average monthly revenue from the Quincy office is in the neighborhood of \$32.

We do not believe that under the facts disclosed at the hearing the defendant should be required to maintain an independent telegraphic agency at the town of Quincy, but we are of the opinion that the service now rendered is inadequate and should be improved. If the sound-proof booth is placed in the station of the Quincy Western Railway Company and all messages telephoned from said sound-proof booth and the telephone line from Quincy to Marston is reconstructed so as to make efficient telegraphic communication possible, we believe that all will have been done by the defendant that in justice it should be required to do under present conditions.

As a result of this investigation and the work done by the Commission's telephone expert, the people of Quincy will enjoy a rate just

fifty per cent of the rate which they have heretofore paid, and we are satisfied also that the service will be much improved.

We do not mean to be understood as holding that every office of the telegraph company should be self-supporting. There may be cases when the Commission would be justified in requiring the telegraph company to maintain an office even though the office itself were conducted at a loss. But, as has already been said, the circumstances in this case do not, in our opinion, warrant any further relief than that which the telegraph company voluntarily offers to give.

We do not consider that a formal order is at this time necessary, but we recommend that the defendant make the improvements it has offered to make, and that after said improvements have been made that an inspection be made by the Commission, and if such improvements are found adequate and satisfactory, that the complaint be dismissed, but if not, that an order be entered requiring such improvements in addition to those voluntarily made as the Commission shall find necessary, and that in the mean time the case be held open, and it is so ordered.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of June, 1913.

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Decision No. 703, grade crossing: not printed. See end of volume.

DECISION No. 704.

ENNIS-BROWN COMPANY  
*vs.*  
SOUTHERN PACIFIC COMPANY.

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Case No. 353.

*Decided June 6, 1913.*

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Complainant asks reparation from Southern Pacific Company in the sum of \$91.30 on storage charges on beans at Sacramento and Stockton.

*Held*, Complaint dismissed, does not come under provisions of section 19 of Public Utilities Act.

*G. J. Bradley*, for Complainant.

*George D. Squires*, for Defendant.

REPORT OF THE COMMISSION.

*GORDON, Commissioner.*

Complainant is a corporation engaged in the buying and selling of produce at Sacramento, California.

By its petition, filed January 3, 1913, the reasonableness of defendant's tariffs providing for the absorption of storage charges on beans at Sacramento and at Stockton, when landed by river boats, is put in issue and reparation asked in the sum of \$91.30.

It is alleged that from November 1, 1911, to October 25, 1912, there was an unreasonable preference and advantage at Stockton in violation of section 21 of article XII of the constitution of the State of California, and of section 19 of the Public Utilities Act.

During the period November 1, 1911, to September 28, 1912, the Southern Pacific Company received from complainant at Sacramento 525,487 pounds of beans for movement to various points in California, and complainant avers that these shipments, which were received from river boats at Sacramento, were discriminated against by defendant, for the reason that they were not given the same absorption of warehouse storage charges as were granted to similar shipments moved from Stockton during the same period of time.

Sacramento and Stockton are located forty-eight miles apart. The traffic conditions in these two cities, as bearing on this proceeding, are by no means comparable. This is not a proper case for the application of the provisions of section 21 of article XII of the constitution or section 19 of the Public Utilities Act.

I find that no unreasonable difference as to rates or charges between localities was shown by the evidence in this case.

I therefore recommend the following order:

**ORDER.**

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had,

*It is hereby ordered* that the complaint in this proceeding be, and it is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of June, 1913.

## DECISION No. 705.

IN THE MATTER OF THE APPLICATION OF SAN JOSE  
WATER COMPANY TO ISSUE PROMISSORY NOTES TO  
THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS.

Application No. 559.

*Decided June 6, 1913.*

Applicant asks for authority to issue notes aggregating \$100,000, money to be used to refund outstanding notes and for additions to plant.

*Held*, Application granted, the notes to be issued at not less than par for a term not in excess of three years.

*S. F. Lieb*, for Applicant.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

San Jose Water Company applies to this Commission for permission to issue its promissory notes to the aggregate amount of \$100,000. San Jose Water Company is supplying water to the city of San Jose and to the city of Los Gatos and the territory in the vicinity of these two cities in Santa Clara County, California.

San Jose Water Company has an authorized capital stock of 12,500 shares of the par value of \$1,250,000, all of which stock is common, and the entire amount has already been issued. Applicant has no bonded indebtedness; the only indebtedness of applicant consists of outstanding notes and accounts payable, amounting together to the sum of \$50,253.91. The value of the physical properties of the San Jose Water Company, as submitted by applicant, amounts to \$1,310,873.88.

The money derived from the notes which applicant desires to issue is to be used for the following purposes:

|   |              |
|---|--------------|
| 1. To refund outstanding notes of applicant.....  | \$46,000 00  |
| 2. To pay for new construction in applicant's plant.....                                  | 29,000 00    |
| 3. To pay for certain property purchased from Pacific Gas and Elec-<br>tric Company ..... | 25,000 00    |
| Total .....   | \$100,000 00 |

The first of these items is made up of five promissory notes which applicant has issued during the past two years, all of the money derived from these notes having been spent in making additions to applicant's plant. The notes are specified in the order attached to this opinion.

The second of these items is made up of certain estimated improvements to be made in applicant's plant. These estimates are given in detail in the order, and I believe that the estimates submitted are reasonable and should be approved.

The third of these items consists of the amount which applicant is to pay to Pacific Gas and Electric Company for certain property along the Los Gatos Creek, and certain rights to the water from this creek. In Application No. 558—being the application of Pacific Gas and Electric Company to sell this property and of San Jose Water Company to purchase the same—the Commission made its order on the 6th day of June, 1913, permitting the consummation of this transfer. The property transferred is set forth in detail in the proposed contract of sale attached to Application No. 558 and marked "Exhibit A."

I recommend that this application be granted and submit herewith the following form of order:

**ORDER.**

San Jose Water Company having applied to this Commission for permission to issue its promissory notes in the aggregate amount of \$100,000 for certain purposes hereinafter specified, and a public hearing having been held upon this application, and the Commission being of the opinion that the money to be procured from the notes herein applied for is reasonably required for the purposes hereinafter specified, and that such purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that San Jose Water Company be and hereby is authorized to issue promissory notes to the aggregate amount of \$100,000 upon the following conditions, and not otherwise, to wit:

1. The notes herein authorized to be issued shall be issued at not less than par, for a term not in excess of three years, and at a rate of interest not in excess of 6 per cent per annum.

2. The money derived from the notes herein authorized to be issued shall be used for the following purposes:

(a) To refund outstanding notes of applicant as follows:

|   |                    |
|---|--------------------|
| Note dated March 21, 1912, payable one day after date to the First National Bank of San Jose, face value----- | \$10,000 00        |
| Note dated November 18, 1912, payable one day after date to First National Bank of San Jose, face value-----  | 10,000 00          |
| Note dated March 3, 1913, payable on day after date to First National Bank of San Jose, face value-----       | 10,000 00          |
| Note dated April 23, 1913, payable one day after date to First National Bank of San Jose, face value-----     | 10,000 00          |
| Note dated May 23, 1913, payable one day after date to Ethel and A. Florence Clayton, face value-----         | 6,000 00           |
| <b>Total -----</b>  | <b>\$46,000 00</b> |

(b) For additions to applicant's plant as follows:

|  |                    |
|--|--------------------|
| Balance on account of main station-----        | \$10,750 00        |
| Balance on account of Buena Vista station----- | 3,750 00           |
| Balance on account of well "N"-----            | 4,750 00           |
| Tisdale pump station -----                     | 2,000 00           |
| Market street 10- and 12-inch line-----        | 3,750 00           |
| Air compressor -----                           | 4,000 00           |
| <b>Total -----</b>                             | <b>\$29,000 00</b> |



- (c) For the purchase from Pacific Gas and Electric Company of the property authorized to be transferred by this Commission's order in Application No. 558, the property being set forth in detail in the proposed contract of sale attached to the application in that proceeding and marked "Exhibit A"-----

\$25,000 00

Grand total ----- \$100,000 00

3. San Jose Water Company shall keep separate, true, and accurate accounts, showing the application in detail of the proceeds procured from the notes herein authorized to be issued, and on or before the twenty-fifth day of each month shall make verified reports to this Commission, stating the amount of notes issued during the preceding month, the amount of money derived therefrom and the application of such money, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted to San Jose Water Company to issue notes shall apply to only notes issued on or before July 1, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 6th day of June, 1913.

#### DECISION No. 706.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO WITHDRAW FROM CERTAIN TERRITORY, AND J. H. EVANS TO CONSTRUCT, OPERATE AND MAINTAIN A TELEPHONE SYSTEM IN SAID TERRITORY.

Application No. 434.

*Decided June 6, 1913.*

Application of J. H. Evans to exercise rights under a proposed telephone franchise in certain specified territory in Stanislaus County now partly served by The Pacific Telephone and Telegraph Company and of The Pacific Telephone and Telegraph Company to withdraw from same.

*Held*, Application granted. Applicant shall put in effect schedules of rates prescribed in this Commission's order. Applicant shall receive from The Pacific Telephone and Telegraph Company 30 per cent of originating tolls or the equivalent thereof in payments divided on originating and incoming business.

*J. H. Evans*, representing Evans Telephone Company.

*H. A. Johnson*, representing The Pacific Telephone and Telegraph Company.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

In this proceeding, J. H. Evans makes application under the provisions of section 50c of the Public Utilities Act for an order of this Commission declaring that this Commission will hereafter, upon application, issue a certificate declaring that public convenience and necessity require the exercise by J. H. Evans of the rights and privileges contained in a franchise which J. H. Evans contemplates securing from the board of supervisors of Stanislaus County, California, which franchise, however, has not yet been granted.

J. H. Evans, at present, operates a telephone system at Patterson, Stanislaus County, California. He now desires to make extensions in his system into certain specified territory in the neighborhood of Patterson. The territory is more specifically described as follows:

“That part of Stanislaus County, California, described by a line beginning at the northeast corner of section 1, T. 5 S., R. 8 E.; thence running west to the west bank of the San Joaquin River; thence following said river bank in a northwesterly direction to the junction of El Puerto Creek; thence following said creek in a southwesterly direction to the north line of section 14, T. 5 S., R. 7 E.; thence west to the northwest corner of section 18; thence south five miles; thence east to the southeast corner of section 1, T. 6 S., R. 8 E.; thence north to the point of beginning.”

The Pacific Telephone and Telegraph Company is now serving a portion of the territory which J. H. Evans desires to enter. The Pacific Telephone and Telegraph Company, however, has joined in the application in this proceeding and has expressed an entire willingness that J. H. Evans serve this specified territory. I believe that if J. H. Evans is permitted to enter this territory the interests of the public will be subserved, and I, therefore, recommend that the Commission make an order preliminary to the granting of the franchise, in accordance with the provisions of section 50c of the Public Utilities Act.

I desire, however, to call attention to two matters which are involved in this proceeding. J. H. Evans has submitted to the Commission for its approval the schedule of rates which he intends to put into effect in the territory which, if this application is granted, he will be permitted to serve. The following provision is contained in this schedule of rates:

“Rates are monthly and payable in advance, and 25 cents discount will be allowed on all rental bills (except for farmer service and mileage rates) if paid on or before the sixth day of the current month.”

The rates involved in this clause are as follows:

|                           | Wall.  | Portable. |
|---------------------------|--------|-----------|
| One business flat.....    | \$2 75 | \$2 75    |
| One residence flat.....   | 2 25   | 2 25      |
| Four residence flat ..... | 1 75   | 2 00      |
| Extension set .....       | 1 25   | 1 25      |

At the hearing upon this application, J. H. Evans indicated that he did not regard this 25 cents discount on the prompt payment of bills as a rate, nor that it was based upon any legitimate operating expense. He testified that he had no collectors at present and did not contemplate having any in the future. This 25 cents discount is arbitrary and would amount to a considerable increase in revenue if the consumers failed to pay before the date specified. While I do not think this practice should be entirely condemned, it should be used merely to enforce prompt payment of bills, thereby saving operating expenses in the collection of such bills, but in no event should the discount be so large that it can be used as a revenue producing device. I believe also that when this practice is permitted it should not take the form of a discount of the bill, but should take the form of an additional charge for the nonpayment of the bill by a certain time.

I recommend that the rate schedule submitted by J. H. Evans be so that each rate shall appear 25 cents less than as submitted in the schedule, and also that J. H. Evans be permitted to make an additional charge upon all bills which are not paid by the tenth day of each current month, such additional charge to be 10 per cent of the amount of the bill for the current month.

I wish to call attention also to the fact that the connecting agreement now in effect between J. H. Evans and The Pacific Telephone and Telegraph Company should be amended so as to provide that in the division of toll revenues between the long distance company and the local company the local company shall receive thirty per cent (30%) of originating tolls, or the equivalent thereof in payments divided on originating and incoming business.

I recommend that the application be granted and submit herewith the following form of order:

#### ORDER.

J. H. Evans having applied, under the provisions of section 50c of the Public Utilities Act, for an order preliminary to the issuance of a certificate declaring that public convenience and necessity require the exercise of rights and privileges contained in a franchise to be secured from the board of supervisors of Stanislaus County, California, and granting to said J. H. Evans the right to operate a telephone system in a certain specified portion of Stanislaus County set forth in the

foregoing opinion, and The Pacific Telephone and Telegraph Company, which is now serving said territory, having expressed entire willingness that the application in this proceeding be granted, and a public hearing having been held upon this application,

*It is hereby ordered* that this Commission will, upon application, under such rules and regulations as it may prescribe, issue a certificate declaring that public convenience and necessity require the exercise by J. H. Evans in that portion of Stanislaus County specified in the foregoing opinion of the rights and privileges contained in a franchise applied for but not yet secured from the board of supervisors of Stanislaus County.

*It is further ordered* that on and after July 1, 1913, J. H. Evans shall put into effect in the territory covered by this application the following rates:

|                           | Wall.  | Portable. |
|---------------------------|--------|-----------|
| One business flat.....    | \$2 50 | \$2 50    |
| One residence flat .....  | 2 00   | 2 00      |
| Four residence flat ..... | 1 50   | 1 75      |
| Extension set .....       | 1 00   | 1 00      |

and the following regulation:

“Rates are monthly and payable in advance, and an additional charge amounting to 10 per cent of the bill for any current month shall be collected upon all bills which are not paid by the tenth day of the current month.”

*It is further ordered* that on and after July 1, 1913, the toll revenues shall be so divided between The Pacific Telephone and Telegraph Company and J. H. Evans, operating the local system at Patterson and vicinity, that the local system shall receive thirty per cent (30%) on originating tolls, or the equivalent thereof in payments divided on originating and incoming business.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 6th day of June, 1913.

## DECISION No. 707.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY TO SELL AND OF SAN JOSE WATER COMPANY TO PURCHASE CERTAIN PROPERTY IN LOS GATOS AND CERTAIN PROPERTY INTERESTS IN THAT VICINITY, AND AUTHORIZING THE SAN JOSE WATER COMPANY TO SELL TO THE PACIFIC GAS AND ELECTRIC COMPANY CERTAIN PROPERTY AND INTERESTS IN PROPERTY.

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Application No. 558.

*Decided June 6, 1913.*

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Application of Pacific Gas and Electric Company to transfer certain land along Los Gatos Creek and certain water rights to water of said creek to San Jose Water Company. *Held*, Application granted.

*Chas. P. Cutton*, for Pacific Gas and Electric Company.

*S. F. Leib*, for San Jose Water Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application by the Pacific Gas and Electric Company for permission to sell and of the San Jose Water Company for permission to purchase certain land along the Los Gatos Creek and certain water rights to the water of this creek.

The San Jose Water Company supplies the city of San Jose, the city of Los Gatos and the territory in the vicinity of these two cities in Santa Clara County.

The property which the San Jose Water Company desires to purchase includes certain land along the banks of the Los Gatos Creek, from which creek the water company now obtains its supply of water. If this land is owned by the water company, the company will be able to keep the creek in a more sanitary condition than is at present possible. The property to be transferred includes certain rights of way for the laying of aqueducts and pipe lines over the property of the Pacific Gas and Electric Company which will enable the water company to increase the efficiency of its system. If the transfer is consummated, the water company will also be able to supply the city of Los Gatos by a gravity system, whereas at present the water which the company supplies to the city of Los Gatos is taken from the creek at a point below the city and pumped to the city.

The water company will also procure certain land upon which it contemplates constructing an aeration plant, which will be used to aerate the water and thus insure its purity.

The two parties to this application have entered into a proposed contract of sale, covering all the property to be transferred. This contract of sale is attached to the opinion and order as "Exhibit A." The property to be transferred is described in this contract in detail. In consideration for the transfer of this property, the San Jose Water Company has agreed to pay to Pacific Gas and Electric Company the sum of \$25,000, and also grant to Pacific Gas and Electric Company the right to take water from the aqueducts of the water company, for the purpose of generating power, cooling electrical apparatus and also extinguishing fires.

I recommend that the application be granted and submit the following form of order:

ORDER.

Pacific Gas and Electric Company having applied to this Commission for permission to sell to San Jose Water Company for the sum of \$25,000 certain property and certain rights to receive water from Los Gatos Creek, all of which property is set forth in detail in the proposed contract of sale attached to this order and marked "Exhibit A," and the San Jose Water Company having joined in this application, and it appearing to the Commission that public convenience will be subserved by the granting of this application,

*It is hereby ordered* that Pacific Gas and Electric Company be and it is hereby authorized to sell to the San Jose Water Company for the sum of \$25,000 all the property and rights to the water of Los Gatos Creek set forth in detail in the proposed contract of sale attached to this order and marked "Exhibit A," and that the San Jose Water Company be and it is hereby authorized to purchase said property and to execute conveyances to the Pacific Gas and Electric Company of certain rights to water from the aqueducts of the San Jose Water Company, all in accordance with the terms of the proposed contract of sale attached to this order and marked "Exhibit A," upon the following condition, and not otherwise, to wit:

The price paid in consideration for the property herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate fixing, or other purposes, the value of the property to be transferred.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of June, 1913.

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*This agreement* made by and between the Pacific Gas and Electric Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its office and

principal place of business in the city and county of San Francisco, State aforesaid, the party of the first part, hereinafter for convenience called the "Pacific Company," and the San Jose Water Company, a corporation also duly organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the city of San Jose, county of Santa Clara, State aforesaid, the party of the second part, hereinafter for convenience called the "Water Company,"

*Witnesseth* that the Pacific Company, in consideration of the promises of the Water Company hereinafter contained, does hereby promise unto the Water Company to sell and convey unto the latter, upon the terms and conditions hereinafter set forth, the property and interests in property which are described as follows, to wit:

1. All of said Pacific Company's rights, titles, interest and estates in and to that certain parcel of land situate in the city of Los Gatos, county of Santa Clara, State of California, which is more particularly described as follows, viz: Commencing at an iron pipe driven in the ground at the northeasterly corner of the bridge crossing the Los Gatos Creek on Main street in the said city of Los Gatos, and running thence north thirty-four (34) degrees east sixty-seven (67) feet to an iron pipe driven in the ground situate approximately five (5) feet northwesterly from another iron pipe driven in a private road leading from Main street to the mill of said Pacific Company; thence north forty-seven (47) degrees fifteen (15) minutes east sixty-five and 30/100 (65.30) feet to an iron pipe driven in the ground situate approximately five (5) feet northwesterly from another pipe driven in said last mentioned private road; thence north thirty-nine (39) degrees twelve (12) minutes west fifty-one and 40/100 (51.40) feet to an iron pipe driven in the ground; thence north fifty-four (54) degrees ten (10) minutes west one hundred and twenty-eight and 80/100 (128.80) feet to an iron pipe driven in the ground; thence south forty-six (46) degrees thirty-four (34) minutes west one hundred and forty-one and 30/100 (141.30) feet to the north side of said Main street; thence along the northeasterly side of said Main street and said bridge south fifty-four (54) degrees ten (10) minutes east one hundred and ninety-three and 48/100 (193.48) feet to the place of commencement.

2. The perpetual right for the Water Company, its successors and assigns, to use, in common with the Pacific Company, as a means of ingress to and egress from said parcel of land first above described, that portion of the private road of the Pacific Company leading from Main street to the mill of the Pacific Company in the said city of Los Gatos, which is adjacent to said parcel of land first above described.

3. All of the Pacific Company's rights, titles, interests and estates in and to the bed and banks of said Los Gatos Creek to the extreme

high-water mark thereof, extending southerly from the southerly side of the parcel of land first above described to the dam across the said Los Gatos Creek south of the town of Alma, by means of which dam the Water Company diverts the waters of said creek.

4. The perpetual right for the Water Company, its successors and assigns, to lay, repair, maintain and use, beneath the surface of the ground, for the purpose of conveying water, an aqueduct consisting of pipes, flumes or tunnels from the first parcel of land hereinbefore described to the tail race of the Pacific Company below the aforesaid mill, such aqueduct to be located within the boundaries of the right of way which was granted by Los Gatos Manufacturing Company, a corporation, to said Water Company by deed of conveyance dated August 21, 1889, and recorded in the office of the county recorder of said Santa Clara County, in Liber 119 of Deeds, at page 240, and to be kept safely covered at all times by the Water Company at its own expense.

5. All of the Pacific Company's rights, titles, interests and estates in and to the site of an old dam which was formerly known as "Rogers Dam" and was located in said Los Gatos Creek about four hundred and twenty (420) rods up-stream from the aforesaid mill now owned by the Pacific Company, together with the right to construct and maintain a dam thereon, and by means thereof to divert and appropriate the waters of said creek there flowing.

6. All of the Pacific Company's rights, titles, interests and estates in and to the rights, privileges, servitudes and easements which were expressly reserved by or granted to the Los Gatos Manufacturing Company by deed of conveyance bearing date December 17, 1886, and recorded in the office of the county recorder of said Santa Clara County in Liber 88 of Deeds at page 89; and also all of the Pacific Company's rights, titles, interests and estates in and to all and singular the rights, privileges, servitudes and easements which were reserved by or granted to the Los Gatos Ice and Power Company by an agreement bearing date July 12, 1902, and recorded in the office of the county recorder of said Santa Clara County in Liber 14 of Miscellaneous Records, at page 53, except the right to use, at the places and in the manner hereinafter specified, the waters of said Los Gatos Creek for the purposes of generating transmissible motive power and cooling transformers and other electrical apparatus and for extinguishing and preventing fires in any building or structure now or hereafter situate upon the parcel of land upon which said mill is situated.

7. Also all of the Pacific Company's rights, titles, interests and estates in and to all of the waters flowing in said Los Gatos Creek and the tributaries thereof, and the right to appropriate, divert and use such waters for any and all beneficial uses, and all pipes, flumes



and other aqueducts now or at any time heretofore used by the Pacific Company or any of its predecessors in interest, in appropriating, diverting and using such waters, except only the right to use such water for the generation of transmissible motive power at such places and in such manner as will not interfere with the Water Company's use thereof for other purposes, or prevent the Water Company from utilizing the pressure of such water in the mains leading to the first parcel of land hereinbefore described for spraying and thereby aerating such water for the purpose of purifying the same, and the right to take so much water from the Water Company's mains at some suitable place in the vicinity of the aforesaid mill as may reasonably be required for cooling the transformers and other electrical apparatus and for extinguishing and preventing fires in any building or structure now or hereafter situate upon the parcel of land upon which said mill is situate.

8. A perpetual right and easement for the Water Company to maintain, repair and from time to time to replace its existing aqueducts, consisting of pipes laid below the surface of the ground and from time to time to construct new aqueducts, consisting of pipes laid beneath the surface of the ground, and to maintain and replace the same, and to use all of such aqueducts for the purpose of conveying water from the Water Company's reservoir situated in said city of Los Gatos and commonly known as and called the "Tisdale Reservoir"; and also from the ravine below said reservoir upon, over and along the three parcels of land situate in said city of Los Gatos which are more particularly described as follows, viz:

(a) A parcel of land of the uniform width of ten (10) feet bounded on the north by Main street; on the east by the parcel of land which was granted and conveyed by W. S. McMurtry and J. Y. McMillin to W. H. Rogers by deed bearing date December 3, 1869, and recorded in the office of said county recorder in Liber 16 of Deeds at page 379; on the west by the parcel of land which was granted by W. H. Rogers et al. to Jacob Andrick by deed bearing date December 3, 1869, and recorded in the office of said county recorder in Liber 38 of Deeds at page 32; and on the south by the extension easterly of the southerly boundary line of the last mentioned parcel of land;

(b) A parcel of land of the uniform width of fifteen and 50/100 (15.50) feet extending from the southerly end of the parcel of land described in the last preceding paragraph in a southerly direction one hundred (100) feet, and being one of the parcels of land which were granted and conveyed by W. S. McMurtry et al. to the Los Gatos Manufacturing Company by deed bearing date August 23, 1886, and recorded in the office of said county recorder in Liber 86 of Deeds at page 307;

(c) A parcel or strip of land twelve (12) feet in width extending

from the southerly end of the parcel of land described in the last preceding paragraph in a southerly direction to a certain reservoir, being the strip of land twelve (12) feet in width which was excepted by the Los Gatos Manufacturing Company from the parcel of land which was granted and conveyed by said Los Gatos Manufacturing Company to W. D. Tisdale by deed bearing date March 3, 1888, and recorded in the office of said county recorder in Liber 105 of Deeds at page 323, and upon and along the center line of which is situated a pipe used for conveying water to the mill property of the Pacific Company.

Also a like right and easement upon, over and along a certain lane commencing at Main street nearly opposite the northerly end of the parcel of land described in paragraph (a) on page 5 hereof, and running thence in a general northerly direction to the parcel of land upon which the aforesaid mill now stands, and from the northerly end of said lane along the course of the present pipe line to the said mill and to a connection with the above mentioned tail race.

9. A perpetual right of way to construct, maintain, repair and from time to time to replace such pipe lines beneath the surface of the ground as may reasonably be required for conveying all water which may be brought through aqueducts at any time maintained upon the right of way described in paragraph number 8 of this agreement from a connection with such aqueduct, between the northerly end of said land and said mill in a general westerly direction along a practicable route to the parcel of land first hereinbefore described, the place of such connection and such route to be selected by the Water Company subject to the approval of the Pacific Company; but it is understood that this right of way is to be granted upon condition that at any time after the necessary pipe lines shall have been laid therein the Water Company, if requested so to do by the Pacific Company, will take up and remove that part of its aforesaid aqueducts which extends from the aforesaid place of connection to said mill, and shall thereupon abandon the right of way for such part of said aqueducts.

If the Railroad Commission of the State of California shall make an order authorizing the Pacific Company to sell and convey the aforesaid property and interests in property to the Water Company upon the terms and conditions herein set forth, the Pacific Company will, within ten (10) days after the making of such order, make, execute, acknowledge and deliver to the Union Trust Company of San Francisco, as escrow holder, a good and sufficient deed of conveyance granting the aforesaid property and interests in property unto the Water Company, and will authorize and instruct said Union Trust Company of San Francisco to deliver such deed of conveyance to the Water Company upon the latter depositing with it for the account of said Pacific Company the sum of twenty-five thousand dollars (\$25,000) in gold coin of

the United States of America; and will also, within ninety (90) days after the making of such order, cause to be executed, acknowledged and deposited with the Union Trust Company of San Francisco, as escrow holder, for delivery to said Water Company, a good and sufficient release and deed of reconveyance releasing and discharging the aforesaid property from the lien, charge and operation of each of the mortgages or deeds of trust which are described as follows, viz:

1. A mortgage bearing date the 1st day of November, 1907, which was executed by the Pacific Company to said Union Trust Company of San Francisco, as trustee, as additional security for the payment of the Unifying and Refunding Bonds of the California Gas and Electrical Corporation;

2. The general and collateral trust mortgage of the Pacific Company dated January 2, 1906, which was executed by said Pacific Company to said Union Trust Company of San Francisco, as trustee;

3. The debenture mortgage, bearing date the 15th day of December, 1907, which was executed by said Pacific Company to the Trust Company of America, as trustee; and

4. The general and refunding mortgage, bearing date December 1, 1911, which was executed by the Pacific Company to the Bankers' Trust Company and F. B. Anderson, as trustees.

The Water Company, for and in consideration of the promises of the Pacific Company herein contained, promises to the Pacific Company to pay unto the latter the sum of twenty-five thousand dollars (\$25,000) as the purchase price of the aforesaid property and interests in property at or before the expiration of ten (10) days after the receipt by it from the Pacific Company of notice that the aforesaid deed of conveyance to be executed by the Pacific Company and the aforesaid releases and deeds of reconveyance have been deposited with said Union Trust Company of San Francisco and are ready for delivery to the Water Company upon the latter depositing said purchase price.

The Water Company, for the consideration aforesaid, further promises to the Pacific Company that it will grant to the latter the right to take water from said aqueducts in the vicinity of said mill for cooling transformers and other electrical apparatus and for extinguishing and preventing fires in any building or structure now or hereafter erected upon the parcel of land upon which said mill is situate, and the right to construct, maintain and operate at any convenient place along the line of the aforesaid aqueducts and pipe lines, but upon the lands of the Pacific Company, such buildings, machinery and apparatus as may at any time be necessary or proper for the utilization of the fall of the water flowing therein for the generation of transmissible motive power; provided, however, that the Pacific Company, in using such water for power purposes, shall not at any time interrupt or impair

the flow thereof through such aqueducts from the Water Company's reservoirs to the parcel of land first hereinbefore described, or interfere with the Water Company's right to regulate and control the flow of such water through such aqueducts.

It is mutually agreed by and between the parties hereto that the Pacific Company, notwithstanding its grant of the rights and easements described in paragraph number 8 of this agreement, shall have the right at any time to erect, maintain and use electric transmission lines supported by towers or poles, or any other suitable means, upon, over and along the parcels of land affected by said rights and easements, and also to make any and all other uses of said parcels of land not inconsistent with the enjoyment by the Water Company of the rights herein agreed to be granted to it; provided, however, that if the construction of any of such electric transmission lines, or the making of any other use of said lands, shall necessitate any change in the location of the Water Company's aqueducts, such change shall be made upon the demand, but at the expense, of the Pacific Company.

It is also mutually agreed by and between the parties hereto that they will, with all reasonable diligence and within thirty (30) days after the date hereof, prepare and file with the Railroad Commission of the State of California a joint application for an order authorizing and approving the sale and conveyance by the Pacific Company to the Water Company of the property and interests in property which the Pacific Company has herein agreed to sell and convey.

This agreement is made subject to the approval of said Railroad Commission and, in the event of said Railroad Commission refusing to authorize the sale and conveyance of the aforesaid property upon the terms and conditions herein specified, this agreement shall cease and become null and void, and both of the parties hereto shall be released and discharged from their respective promises herein contained.

*In witness whereof* the parties hereto have, on this 17th day of April, 1913, executed these presents in duplicate.

PACIFIC GAS AND ELECTRIC COMPANY,

By JOHN A. BRITTON,

[Corporate Seal]

its Vice-President and General Manager;  
and by D. H. FOOTE, its Secretary.

SAN JOSE WATER COMPANY,

By JOSEPH R. RYLAND, its President,

[Corporate Seal]

and by H. L. KITTREDGE, its Secretary.

## DECISION No. 708.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AUTHORITY TO ISSUE NOTES AGGREGATING FACE VALUE THIRTY MILLION DOLLARS (\$30,000,000), WITH INTEREST AT FIVE PER CENT (5%) PER ANNUM AND SECURED BY BONDS AND OTHER SECURITIES.

Application No. 585.

*Decided June 7, 1913.*

Applicant asks for permission to issue notes aggregating face value of \$30,000,000, money to be used in additions and betterments to existing lines and the construction of lines into new territory.

*Held*, Application granted, applicant to sell the notes so as to net not less than 97½ per cent of the face value thereof plus accrued interest at date of delivery.

*Guy V. Shoup*, for Applicant.

## REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application for an order authorizing the issue by Southern Pacific Company of \$30,000,000 face value of notes to be dated June 1, 1913, to mature June 1, 1915, and bearing interest at five per cent per annum, payable semiannually, said notes to be subject to redemption at par and accrued interest on June 1, 1914, and December 1, 1914, on thirty days' notice by applicant to the holders thereof.

Applicant was organized under the laws of the State of Kentucky, March 17, 1884, and through stock ownership, leases and otherwise, it owns, controls and operates a large number of railroad and other transportation systems located in a number of states. Among others, it so controls and operates extensive railroad and other transportation systems in the State of California.

The financial condition of applicant is as follows:

|  |                  |
|--|------------------|
| Bonds outstanding June 30, 1912-----           | \$140,587,410 00 |
| Stock outstanding June 30, 1912-----           | 272,675,730 00   |
| Bonds unpledged in treasury June 30, 1912----- | 106,000,000 00   |
| Stock unpledged in treasury June 30, 1912----- | 105,000,000 00   |

Applicant submits a statement showing earnings over fixed charges, operating expenses and taxes for the year ending June 30, 1912, of \$21,603,000 and estimated earnings for the year ending June 30, 1913, of \$21,855,000.

It is proposed to secure the payment of the promissory notes by pledging a part of these stocks or bonds, or both, as such security. The indebtedness represented by the promissory notes is not to be a lien upon any of the operating property of applicant.

At the hearing it was testified that the issuance of these notes for the comparatively short period of two years at five per cent was the most economical method of raising money needed to make additions and betterments to the properties of applicant at this time; that because of the condition of the money market any attempt to sell bonds running for a long period would result in the payment by applicant of more by way of interest and discount for the money obtained than by the proposed plan.

The purposes for which the money to be derived from these notes are to be used are additions and betterments to existing lines and the construction of lines into new territory.

A summary of such additions and betterments to be made on the Pacific coast in California and Oregon, and toward the payment of which a part of the money to be obtained on the sale of these notes is to be applied, is as follows:

|   |                 |
|---|-----------------|
| Southern Pacific Co.—Pacific System.....                      | \$11,356,540 00 |
| Salem, Falls City and Western Railway.....                    | 68,680 00       |
| Pacific Railway and Navigation Co.....                        | 134,540 00      |
| Portland, Eugene and Eastern Railway.....                     | 2,501,880 00    |
| Coos Bay, Oregon, Coal Co.....                                | -----           |
| Coos Bay, Roseburg and Eastern Railway and Navigation Co..... | 4,470 00        |
| Corvallis and Eastern Railroad Co.....                        | 270,580 00      |
| Albion Lumber Co.....   | 10,250 00       |
| Pacific Fruit Express Co. (one half).....                     | 75,625 00       |
| Grand total .....   | \$14,422,565 00 |

Applicant proposes to expend, in additions and betterments on its entire system for the calendar year 1913, \$48,526,000, toward which expenditure the proceeds from the sale of these notes are to be applied, the balance to be supplied from other sources, probably from surplus.

It appears beyond doubt that applicant is in such excellent financial condition as to make sure that the principal and interest on these proposed notes can be promptly paid and it further appears that all of the money to be derived therefrom is to be used for purposes properly capitalizable under the California law.

The representatives of applicant were unable to state in detail what securities and the amount thereof which would be pledged as collateral security for these notes, and while this order may properly be made prior to the furnishing of such detail, the Commission should be furnished a complete list of the securities so pledged, and also be furnished with any contract which may be executed in relation to the issuance of these notes or the pledge of collateral as security therefor.

It has been suggested by representatives of applicant that a minimum sale price of 97½ per cent of face value be placed upon these notes, and while it is apparent that under ordinary conditions these notes drawing five per cent should bring par, in view of the security to be placed behind them and the excellent showing of earnings by applicant, still

I realize that there is a condition of the money market at present to be recognized, and it may be necessary for applicant to discount these notes in order to obtain the required money.

I recommend that the application be granted upon the conditions, among others, that immediately upon the execution of any contract in relation to the issuance of these notes, or the pledging of collateral to pay the same, this Commission be furnished with a copy of such agreement and also with a complete list of the securities pledged as collateral. Further, that before the expenditure of any of the money in California derived from the sale of these notes, complete detailed estimates of the betterments, additions and improvements proposed to be made in California be furnished for the approval of the Commission.

I submit herewith the following form of order:

#### ORDER.

Application having been made to the Railroad Commission of the State of California by Southern Pacific Company for an order authorizing the issue by said company of \$30,000,000 face value of notes, bearing interest at the rate of five per cent per annum, dated June 1, 1913, and payable June 1, 1915,

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said notes is necessary and reasonably required by said company for the acquisition of property and the construction, completion and extension of its facilities, and that the purposes for which the proceeds of the sale of said notes are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Southern Pacific Company of \$30,000,000 face value of notes, bearing interest at the rate of five per cent per annum, said notes to be dated June 1, 1913, and to be due and payable June 1, 1915, and to be subject to redemption at par and accrued interest on June 1, 1914, and December 1, 1914, on thirty days' notice by said company to the holders thereof.

Said notes are to be issued upon the following conditions and not otherwise:

1. Southern Pacific Company shall sell the notes hereby authorized so as to net said company not less than 97½ per cent of the face value thereof plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said notes shall be used for the following purposes only:

For additions and betterments to existing lines and for the construction of lines into new territory and for such purposes on the Pacific coast, as follows:

|  |                        |
|--|------------------------|
| Southern Pacific Co.—Pacific System-----                       | \$11,350,540 00        |
| Salem, Falls City and Western Railway-----                     | 68,680 00              |
| Pacific Railway and Navigation Co.-----                        | 134,540 00             |
| Portland, Eugene and Eastern Railway-----                      | 2,501,880 00           |
| Coos Bay, Oregon, Coal Co.-----                                | -----                  |
| Coos Bay, Roseburg and Eastern Railway and Navigation Co.----- | 4,470 00               |
| Corvallis and Eastern Railroad Co.-----                        | 270,580 00             |
| Albion Lumber Co.-----   | 10,250 00              |
| Pacific Fruit Express Co. (one half)-----                      | 75,625 00              |
| Grand total -----  | <u>\$14,422,565 00</u> |

for a more detailed description of which reference is hereby made to "Exhibit B" on file herein.

3. Immediately upon the execution of any agreement under which said notes are issued, a true copy of said agreement, together with a complete list of the securities pledged as security for the payment of said notes, shall be furnished this Commission.

4. Before any of the money derived from the sale of said notes shall be spent in California, full and detailed estimates of the additions and betterments and improvements proposed to be made in California shall be furnished for the approval of the Commission.

5. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said notes hereby authorized to be issued, and on or before the 25th day of each month the company shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the sale or disposition of such notes during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

6. The authority hereby given to issue such notes shall apply only to notes issued by said company on or before the 1st day of July, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1913.



## DECISION No. 709.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES  
AND SAN DIEGO BEACH RAILWAY COMPANY FOR AN  
ORDER AUTHORIZING THE ISSUE OF CAR TRUST  
NOTES IN THE AMOUNT OF TWENTY-EIGHT THOU-  
SAND DOLLARS.

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Application No. 587.

*Decided June 7, 1913.*

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Application of Los Angeles and San Diego Beach Railway Company to issue car trust notes in the amount of \$28,000, to be used in partial payment for three Edison storage battery cars.

*Held*, Application granted, said notes to net applicant not less than par value, provided sum of \$1,400 may be paid as commission to bankers placing notes.

*George J. Leovy and Leovy & Leovy, for Applicants.*

## REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application for an order authorizing the issue by applicant of car trust notes in the amount of \$28,000 in partial payment for three Edison storage battery motor cars.

Applicant operates a line of railway between San Diego and La Jolla, in San Diego County. The line has been operated partly by steam and partly by gasoline motor cars. The steam passenger coaches are inadequate and the gasoline motor cars have proved unsatisfactory because of frequent breakdowns, so that the people living along the line of the railway have had just cause of complaint with reference to the service. By contract dated November 26, 1912, the applicant accordingly contracted to purchase from Federal Storage Battery Car Company three double-truck beach cars, of the Edison storage battery type, each car to have a seating capacity of 72 passengers, and the purchase price to be \$46,032.00. Under the provisions of the contract, \$18,032 are to be paid in cash upon the inspection of the cars and the approval thereof after demonstration on the lines of the Erie Railroad Company, and the remaining sum of \$28,000 is to be covered by car trust notes, of which 24 are to be of the face value of \$1,000 each and 8 of the face value of \$500 each. These notes are to bear interest at rate of 6 per cent per annum and \$3,500 thereof are to be due and payable at each successive period of six months. A commission of \$1,400 is to be paid for placing the notes.

The title to the cars is to remain in the Railway Storage Battery Car Company, as trustee, and the cars are to be leased to the applicant for the period of four years, at the end of which time, if the car trust

notes have been paid, the cars are to become the property of applicant. For further details of the contract reference is made to copy of contract which is attached to application and marked "Exhibit A."

The object which applicant has in view, namely, the improvement of its passenger service, is very commendable. That the need for such improvement exists is clearly pointed out in this Commission's opinion in Case No. 265, *Frank Williams and John W. Hannay vs. Los Angeles and San Diego Beach Railway Company*.

I find that the purposes for which applicant desires to issue said notes are not in whole or in part reasonably chargeable to operating expenses or to income and recommend that the application be granted.

I submit herewith the following form of order:

**ORDER.**

Los Angeles and San Diego Beach Railway Company having applied to the Commission for an order authorizing the issue by said company of car trust notes in the aggregate amount of twenty-eight thousand (\$28,000) dollars, as will hereinafter appear in greater detail, and a public hearing having been held upon said application, and it appearing that the purposes for which said notes are to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that said Los Angeles and San Diego Beach Railway Company be and the same is hereby authorized to issue its promissory notes in the aggregate amount of twenty-eight thousand (\$28,000) dollars, to bear interest at the rate of six (6%) per cent per annum, twenty-four (24) of said notes to be of the face value of one thousand (\$1,000) dollars each and eight (8) to be of the face value of five hundred (\$500) dollars each, three (3) of said one thousand dollar notes and one (1) of said five hundred dollar notes to become due and payable each six months after the date of bill of lading covering the shipment of said cars, until the full sum of twenty-eight thousand (\$28,000) dollars has been paid, on the following conditions and not otherwise, to wit:

1. Said notes shall be issued so as to net applicant not less than the par value thereof, provided that the sum of fourteen hundred (\$1,400) dollars may be paid as commission to be charged by the bankers for placing said notes.

2. The proceeds of said notes shall be applied only in payment for three (3) double truck beach cars, of the Edison battery storage type, as specified in the contract attached to the application.

3. Los Angeles and San Diego Beach Railway Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the notes hereby authorized to be issued, and on or before the twenty-fifth day of each month shall

make verified reports to the Commission, stating the sale of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as applicable is made a part of this order.

4. The authority hereby given to issue notes shall apply only to notes issued by applicant on or before the first day of July, 1914.

5. The authority hereby given to issue notes is conditioned upon the payment of the fee prescribed by section 57 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of June, 1913.

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DECISION No. 710.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR A CERTIFICATE DECLARING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE SOUTHERN SIERRAS POWER COMPANY TO CONSTRUCT CERTAIN ELECTRICAL LINES TO SERVE THE CITY OF REDLANDS, SAN BERNARDINO COUNTY, CALIFORNIA.

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Application No. 556.

*Decided June 9, 1913.*

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ORDER OF DISMISSAL.

REPORT OF THE COMMISSION.

The Southern Sierras Power Company having on June 7, 1913, made written request to this Commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 9th day of June, 1913.

Decisions Nos. 711 and 712, grade crossings; not printed. See end of volume.

DECISION No. 713.

CITY OF GLENDALE

*vs.*

TITLE GUARANTEE AND TRUST COMPANY, TRUSTEES FOR  
THE GLENDALE CONSOLIDATED WATER COMPANY.

Case No. 365.

CITY OF GLENDALE

*vs.*

MIRADERO WATER COMPANY.

Case No. 383.

*Decided June 11, 1913.*

Complaint of the city of Glendale against the Glendale Consolidated Water Company and Miradero Water Company to compel the two water companies to install service connections and meters without direct charge.

Defendant protested jurisdiction of Commission. Decision of April 28, 1913, overruled objection and established Commission's jurisdiction. *Held*, that question was one of service and not of rates; that towns of sixth class have no authority over service of utilities.

Defendants contend: 1. That they are not under duty to install connections free. 2. Their revenues are insufficient to permit such installation. 3. That water supply is limited and additional consumers can not be served without additions and betterments.

*Held*, 1. That it is the duty of a water company to supply service connections up to property line and install meters. 2. That if the utility's revenues are insufficient, application should be made to the rate-fixing authority. 3. That there is no satisfactory evidence of insufficient water supply.

*Held*, That rule imposing charge of \$15 for service connections should be abrogated and installations made free of charge.

*W. E. Evans*, for Plaintiff.

*W. G. Cooke* and *W. Andrews*, for Defendants.

REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

The above two cases were brought by the city of Glendale for the purpose of compelling two water companies delivering water to the citizens of Glendale to install service connections and meters without direct charge therefor, upon application of prospective consumers along the mains of said companies. No question of extension of mains is involved in these cases.

The complaint in Case No. 365 was filed on February 3, 1913. It alleges, in effect, that the defendant on or about November 7, 1912, purchased at foreclosure sale, as trustee for the bondholders, the property of the Glendale Consolidated Water Company, which prior

to said date, was supplying water for domestic use to inhabitants of the city of Glendale; that from July 1, 1912, to the time at which the Title Guarantee and Trust Company took charge of said water system, service connections were furnished at the expense of the Water Company, but that when the trustee took charge of the property, a charge of \$15 per service connection was imposed, which charge has thereafter been maintained; that said Title Guarantee and Trust Company refused to make a service connection to the property of one W. K. Dobbins from the main in the street unless he paid in advance the said sum of \$15; that said company has taken the same position with reference to a number of other service connections; that the actual cost of making a service connection is considerably less than \$15; and that the complaint was filed under resolution of the board of trustees of Glendale, passed January 31, 1913.

Thereafter, a copy of the complaint was mailed to the defendant, who, on February 21, 1913, filed with this Commission a formal statement of defects contained in the complaint, the main alleged defect being a lack of jurisdiction on the part of the Railroad Commission and a claim that the matter at issue was one of water rates, which was a matter subject to the authority of the city of Glendale.

The hearing on the question of jurisdiction was thereafter held on March 12, 1913.

On April 28, 1913, the Commission rendered its opinion and order overruling the objections of the defendant and directing that the complaint take its usual course to a hearing. The Commission held that the question was one of service and not of rates; that towns of the sixth class have no authority over the service of public utilities; and that this authority is vested in the Railroad Commission. The Commission thereupon ordered the defendant to satisfy the complaint within ten days or to answer the same.

The defendant thereafter, on the 14th day of May, 1913, filed its answer. The answer admits certain allegations of the complaint and sets up three main defenses as will hereinafter appear.

In case No. 383, the complaint was filed on March 26, 1913. The answer in this case was filed on May 17, 1913. The complaint and answer raise substantially the same issues as are raised in Case No. 365, except that the issue as to the trusteeship is not involved.

The hearing in this case was held in the city of Los Angeles on May 29, 1913. Upon agreement of all the parties, the cases were consolidated for hearing.

The evidence shows that the Glendale Consolidated Water Company, a California corporation, supplies water in the cities of Glendale, Tropic, South Pasadena and Los Angeles and certain adjacent territory. The company has 1,048 consumers in the city of Glendale.

The Miradero Water Company also supplies a portion of the city of Glendale with water, and has in said city about 160 consumers.

From July 1, 1912, until its property was sold at foreclosure in November, 1912, the Glendale Consolidated Water Company furnished service connections and meters free. The Miradero Water Company did likewise from July 1, 1912, until about March 1, 1913. Both the defendants are now charging the sum of \$15 for the service connections, including meter, and insist on their right to impose this charge.

The defendant's witnesses testified that the cost of the service connection and the meter varies between \$12.45 and \$14.15 as follows:

|   |                |
|---|----------------|
| Meter .....   | \$7 25         |
| Pipe, 5 cents per foot for an average length of not to exceed 18 feet, amounting to a maximum average of..... | 90             |
| Labor .....   | 1 80 to \$2 70 |
| Clamps .....  | 75 to 1 50     |
| Box for meter.....  | 45 to 50       |
| Gate valve .....  | 65             |
| L's and T's.....  | 15             |
| City license fee for tearing up streets.....  | 50             |

The complainant, at the hearing, contended that it was the duty of the defendant, as a matter of law, to install the service connections and meters without exacting a fee therefor. The defendants made three main defenses, as follows:

1. They contended that they are not under a duty to install connections free.

2. They urged that their revenues are insufficient to permit such installation.

3. The Title Guarantee and Trust Company contended that its water supply is limited and that it cannot serve additional customers without additional development.

I shall consider these defenses in order.

That it is the duty of a water company to supply service connections up to the property line and meters, where meters are used, without direct expense to the consumer, seems both clear on principle and on authority. Such requirement seems entirely reasonable. The service pipe up to the property line and the meters, where used, are as necessary in the performance of the water company's duty to the public as its reservoirs, wells or mains. The consumer has no right to dig up the streets to lay a service pipe. That right belongs to the water company alone. It seems unreasonable to ask that the consumer should pay for service pipes and meters which are a part of the water company's system, which the consumer has no legal right to install and which are under the complete control of the water company.

The authorities are in line with what I believe to be the correct rule on principle. In *Spring Valley Water Works vs. City and County of San Francisco*, 82 Cal. 286, one of the questions at issue was the validity

of the requirement of an ordinance of the city and county of San Francisco requiring the water company to supply the meters at its own expense. Referring to this issue, the court says at page 316:

“It is also contended that the requirement that meters shall be furnished by the plaintiff is unreasonable and can not be enforced, but we think otherwise. The requirement that the party furnishing water shall provide the meters necessary for its measurement, so that the quantity furnished and to be paid for may be known, is not an unreasonable requirement. The expense of the meter could not be imposed on the consumer (*Red Star Steamship Co. vs. Jersey City*, 45 N. J. L. 246).”

The leading case on the question of the duty of a water company to install service connections and meters is the case of *Hatch vs. Consumers Company*, 17 Idaho, 204, 104 Pac. 670. This is an action of mandamus to compel a water company to make a service connection between a lot in the city of Coeur d’Alene in Idaho and the water company’s mains located in the street in front of the property. The water company claimed the right to collect a fee of \$8.50 for making the tap and service connection. The Supreme Court of Idaho, in directing that the writ issue, uses in part the following language at page 672 of the Pacific Reporter, referring specifically to the duty of the water company to make the connection to the property line at its own expense:

“On the other hand, the consumer has no right or franchise to excavate the streets or to lay or maintain pipes therein. When he undertakes to pass beyond his property line with pipes, he is met by the public authorities and the franchise held by the water company. He is in no position to acquire a property right in the streets and alleys by laying pipes therein. The water company, on the contrary, is clothed with this power and right and all the necessary authority for creating and establishing property rights therein and the protection of such property. There is no reason in saying that the company has no interest in laterals it may lay in the streets from its main to the line of abutting property owners. These laterals are of just as much use and as valuable to the company as its mains in proportion to the amount of water to be delivered through such laterals as compared with that delivered through the main. The only difference whatever is in the extent of the service. The capacity of a main is ordinarily such that it will supply a large number of consumers along the street from the one main. The capacity of a lateral is ordinarily such that it will only supply one or two consumers. The relative value to the company of the main and laterals is measured by the extent of the service from the two. The necessity, however, for one is just as great as for the other. Without a main none of the residents along a street can be supplied. Without a lateral the individual consumer can not be supplied. The law of ownership is the same in

the one case as the other, and the right of property and control is the same in each instance. Water companies maintain water works for the purpose of collecting rates and tolls. They operate them for gain. In order to collect tolls, they must deliver water. The consumer, on the other hand, pays his money for service. Unless he is served, there is nothing for which he may be called upon to pay."

This case was later appealed to the United States Supreme Court on the ground that the decision violated the water company's constitutional rights. The Supreme Court, by its decision rendered on April 1, 1912, affirmed the judgment. (*Consumers Company vs. Hatch*, 224 U. S. 148.) In its opinion, the court refers with approval to the decision of the Supreme Court of Idaho in the case of *Pocatello Water Company vs. Standley*, 7 Idaho, 155, 61 Pac. 518, in which case the court uses the following language:

"It (the water company) cannot compel the user of water to pay for such work or pipes, but it may require him to pay a reasonable compensation for furnishing him the water. In other words, the company can not compel the citizen to pay for a part of the system of water works it has agreed to construct, but it must construct its own system within its franchise limits, at its own expense."

The same doctrine is laid down in the case of *Bothwell vs. Consumers Company*, 13 Idaho, 568, 92 Pac. 533. See, also, Wyman, Public Service Corporations, section 406.

This Commission has heretofore in several cases issued orders in reliance on the principle established by the foregoing cases. In the following cases the Commission ordered a water company to install service pipes to the property line or meters or both, at the company's own expense:

Application No. 5, Decision No. 356, application of Hawthorne Electric and Water Company.

Application No. 118, Decision No. 536, application of James A. Murray and Ed Fletcher.

Case No. 308, Decision No. 608, application of San Geronio Water Company and the Beaumont Land and Water Company.

Application No. 370, and No. 426, Decision No. 660, application of the Lawndale Land and Water Company.

Defendants have filed in this case a brief in which they rely on certain cases as establishing the rule that a water company may reasonably demand that the consumer pay for the entire service connection and also the meter. While it is true that there are certain cases which seem to adopt this view, the contrary rule seems to be the better one on principle and to be sustained by the weight of authority.



With reference to the second defense, both defendants urge that their revenues are not sufficient to enable them to make service connections and install meters at their own expense. In support of this contention, the Title Guarantee and Trust Company at the hearing presented evidence showing the receipts and expenditures of the Glendale Consolidated Water Company over its entire system, but no segregation was made to show the conditions as affecting the city of Glendale. In response to the request of the defendants in both cases, permission was given to file supplemental statements, showing the receipts and expenditures for the city of Glendale. These statements have been filed and purport to show that the business of both companies is carried on at a loss. To ascertain their real condition would demand a careful analysis of values and expenditures. Such analysis is not necessary to the decision of these cases for the reason that if the present revenues of these companies are insufficient, the remedy is in an application to the city of Glendale, which city has the power to fix water rates within its limits, for authority to charge a rate for water which shall be just and reasonable. The water companies are entitled to have the rate fixing authority consider their expenses for service connections and meters, but they should not labor under the delusion that they have the right to pay for their capital out of income and to compel their consumers in that way to donate to them their systems.

The Title Guarantee and Trust Company claimed also that it was merely in the position of a trustee for the bondholders of the Glendale Consolidated Water Company and that it could not be compelled to secure funds in addition to those in its treasury, as such trustee, in order to pay for the service connections and meters. The duty of a water utility to the public can not be avoided in any such way by a sale of the plant at foreclosure. The purchaser takes the property subject to all obligations to the public. It is the duty of the bondholders in this case to see to it that the Water Company performs its duties to the public. If the bondholders are unwilling to do so they should dispose of the plant to somebody who will do so.

The Title Guarantee and Trust Company, as trustee, also contends that it does not have a sufficient supply of water to supply additional consumers. This claim is made for the first time in the answer in this proceeding. It appears from the evidence that additional service connections are being made by this company in the city of Glendale at the rate of about fifteen per week, and that the company has never heretofore made the claim that it does not have a sufficient supply of water to take on new consumers and that water has never been refused by this company to any person in the city of Glendale because of an alleged insufficient supply. There is no satisfactory evidence to support the company's contention.

I find that the rule or regulation of the defendant water companies requiring the payment of a fee for a service connection and the installation of a meter is an unjust and unreasonable rule and that it should be abrogated, and that the defendant companies are under the duty of furnishing service connections to the property line and meters at their own expense. A proper return on the investment so made must be allowed in fixing rates.

I recommend the following form of order:

**ORDER.**

The city of Glendale having filed its complaint against Title Guarantee and Trust Company, as trustees for the Glendale Consolidated Water Company, in Case No. 365, and likewise its complaint against the Miradero Water Company, in Case No. 383, and answers having been filed therein, and all the parties having agreed that said cases might be consolidated for hearing, and said cases having been heard and submitted and being now ready for decision,

The Commission finds that the rule or regulation of said companies imposing a charge of fifteen (\$15) dollars to be paid by the consumer of water for service connection to the property line and meter is an unjust and unreasonable rule, and that it is the duty of the water company to make such connection and furnish such meter at its own expense.

Basing its order on said finding and on the further findings contained in the opinion which precedes this order,

*It is hereby ordered* that said rule or regulation be and the same is hereby abrogated, and that said defendants be and they are hereby ordered to make service connections to the property line and install meters free of charge for persons living in the city of Glendale along the mains or pipe lines of said companies and desiring connection for the service of water.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of June, 1913.

## DECISION No. 714.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
COUNTIES GAS COMPANY OF CALIFORNIA FOR  
AUTHORITY TO ISSUE BONDS.

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Application No. 230.*Decided June 11, 1913.*

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Fifth supplemental order granting permission to Southern Counties Gas Company to issue balance of bonds of the par value of \$4,000, subject to conditions in original decision in this application.

## REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

The Commission having on October 14, 1912, made an order in the above entitled proceeding authorizing Southern Counties Gas Company of California to issue from time to time its 30-year 6 per cent first mortgage bonds in the aggregate amount of \$47,000, under its mortgage and deed of trust to Los Angeles Trust and Savings Bank, dated April 1, 1911, upon the condition, among others, that prior to each issuance of such bonds applicant should have filed with the Commission a verified statement showing that the terms of said trust deed had been complied with fully, and that the Commission should have made a supplemental order permitting the issuance of such bonds;

And this Commission having, in supplemental orders, authorized Southern Counties Gas Company of California to issue, under the original order of this Commission, bonds to the amount of \$43,000;

And application having been made on June 9, 1913, by Southern Counties Gas Company of California for authority to issue the balance of \$4,000 par value of said bonds, under the original order in this proceeding made by the Commission on October 14, 1912, and it appearing that applicant has complied with the terms and conditions of the mortgage and deed of trust hereinbefore mentioned;

*It is hereby ordered* that Southern Counties Gas Company of California be and it is hereby authorized to issue \$4,000 of its 30-year 6 per cent first mortgage bonds, upon the conditions set forth in this Commission's order in the above entitled proceeding made on October 14, 1912, which conditions are hereby made a part of this order.

The foregoing supplemental order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of June, 1913.

## DECISION No. 715.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY FOR AN ORDER AUTHORIZING IT TO EXECUTE A MORTGAGE AND DEED OF TRUST TO MERCANTILE TRUST COMPANY OF SAN FRANCISCO, AND TO PLEDGE AS SECURITY THREE HUNDRED THOUSAND DOLLARS OF BONDS.

Application No. 368.

*Decided June 11, 1913.*

Supplemental order granting permission to Tulare County Power Company to pledge bonds to the value of \$23,000 as security for notes in the sum of \$17,202.60 under conditions in original order of Commission in this application dated February 20, 1913.

## REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This Commission having on February 20, 1913, issued an order authorizing Tulare County Power Company to issue \$300,000 of its 6 per cent 40-year first mortgage bonds, and said authority having been granted upon the condition, among others, that if said bonds were pledged as collateral security, they should be pledged for not less than 75 per cent of their face value and only after this Commission had approved the note for the payment of which they were given as security; and Tulare County Power Company having, on June 6th, made application to this Commission for authority to pledge \$23,000 of said bonds as collateral security for notes to John A. Roebling Sons Company of California in the sum of \$17,202.60, said notes to be in form and amount as follows:

|   |                    |
|---|--------------------|
| One note dated June 3, 1913, due September 3, 1913----- | \$1,633 58         |
| One note dated June 3, 1913, due October 3, 1913-----   | 1,633 58           |
| One note dated June 3, 1913, due November 3, 1913-----  | 1,633 58           |
| One note dated June 3, 1913, due December 3, 1913-----  | 1,633 58           |
| One note dated June 3, 1913, due December 31, 1913----- | 10,668 25          |
| <b>Total -----</b>                                      | <b>\$17,202 57</b> |

*It is hereby ordered* that Tulare County Power Company be and it is hereby authorized to pledge \$23,000 of its 40-year 6 per cent first mortgage bonds authorized by order of this Commission on February 20, 1913, as collateral security for the following notes to John A. Roebling Sons Company of California:

|   |                    |
|---|--------------------|
| One note dated June 3, 1913, due September 3, 1913----- | \$1,633 58         |
| One note dated June 3, 1913, due October 3, 1913-----   | 1,633 58           |
| One note dated June 3, 1913, due November 3, 1913-----  | 1,633 58           |
| One note dated June 3, 1913, due December 3, 1913-----  | 1,633 58           |
| One note dated June 3, 1913, due December 31, 1913----- | 10,668 25          |
| <b>Total -----</b>                                      | <b>\$17,202 57</b> |

The authority herein granted to pledge said bonds is granted upon the conditions enumerated in the order of this Commission of February 20, 1913, upon application No. 368.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of June, 1913.

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DECISION No. 716.

IN THE MATTER OF THE APPLICATION OF LAWNDALE LAND AND WATER COMPANY TO PURCHASE THE WATER SYSTEM OF LAWNDALE WATER COMPANY; TO ISSUE STOCK; TO MORTGAGE ITS PROPERTY TO ISSUE BONDS; AND TO CHANGE ITS RATES FROM A FLAT BASIS TO A METER BASIS; AND OF LAWNDALE WATER COMPANY TO SELL ITS WATER SYSTEM.

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Applications Nos. 370 and 426.

*Decided June 12, 1913.*

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL ORDER.

Provision having been made in the order of this Commission in the above entitled matter, rendered on May 9, 1913, that the bonds in the sum of \$25,000 therein authorized should be guaranteed, both as to principal and interest, by Charles B. Hopper and A. H. McFarland, they then being joint owners in Lawndale Land and Water Company, and it now appearing that Charles B. Hopper has purchased the interest of A. H. McFarland in said company;

*It is hereby ordered* that the order in the above entitled matter, issued by this Commission on May 9, 1913, be amended so that the guarantee of the payment of said \$25,000 in bonds, both as to principal and interest therein provided to be made by Charles B. Hopper and A. H. McFarland, shall be made by Charles B. Hopper in a form satisfactory to this Commission.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 12th day of June, 1913.

## DECISION No. 717.

IN THE MATTER OF THE APPLICATION OF THE FOWLER  
INDEPENDENT TELEPHONE COMPANY FOR PERMIS-  
SION TO INCREASE THE MONTHLY RENTAL OF TELE-  
PHONES.

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Application No. 572.

*Decided June 12, 1913.*

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## REPORT OF THE COMMISSION.

## ORDER OF DISMISSAL.

The Fowler Independent Telephone Company having applied to this Commission for permission to increase its charges for telephone service, and it having appeared at the public hearing held upon this application that the Fowler Independent Telephone Company had not notified its patrons of said hearing in accordance with the instructions of this Commission, and also that the Fowler Independent Telephone Company had not fully prepared the evidence necessary to show an appraisal of its properties and its present financial condition;

And it being understood at the hearing that the above entitled application should be dismissed, and that the Fowler Independent Telephone Company contemplated filing another application as soon as the necessary evidence had been collected,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 12th day of June, 1913.

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DECISION No. 718.

ENNIS-BROWN COMPANY  
*vs.*  
SOUTHERN PACIFIC COMPANY.

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Case No. 353.

*Decided June 13, 1913.*

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## REPORT OF THE COMMISSION.

## ORDER DENYING PETITION FOR REHEARING.

Complainant in the above entitled case having filed with this Commission a petition for a rehearing and no good reason for a rehearing appearing,

*It is hereby ordered* that said petition be and the same is hereby denied.

Dated at San Francisco, California, this 13th day of June, 1913.

DECISION No. 719.

IN THE MATTER OF THE APPLICATION OF THE BRANHAM PLANT TO SELL AND THE LASSEN ELECTRIC COMPANY TO PURCHASE ALL OF THE PROPERTY OF THE BRANHAM PLANT LOCATED IN AND NEAR THE TOWN OF SUSANVILLE, IN THE COUNTY OF LASSEN.

Application No. 584.

*Decided June 14, 1913.*

Application of the Branham Plant, an electrical plant, to sell its property in and near Susanville to the Lassen Electric Company.

*Held*, Application granted, the price paid for this property not to be binding in any rate fixing inquiry. The transfer shall not be used to increase rates.

*Scott Hendricks*, for Applicants.

REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

The Branham plant, so-called, is an electrical plant located in and near the town of Susanville, Lassen County. It has a small installation and serves a few consumers in the town of Susanville. The Lassen Electric Company is a corporation also serving the town of Susanville and adjacent territory.

The applicants urge that there is not room for the two companies in this territory, and further that there will be outlays necessary to be made by the Branham plant in order properly to serve its consumers which are not justified by the business to be had. The agreed price at which this property is to be sold is forty-five hundred (\$4500) dollars. The representatives of the city authorities of Susanville favor the transfer, and I see no reason why it should not be consummated under conditions which will be set out in the order.

I, therefore, recommend the following order:

ORDER.

Branham plant, a public utility, serving electricity to a portion of the town of Susanville, having applied to sell all of its plant to the Lassen Electric Company, an electrical corporation also serving the town of Susanville and adjacent territory, for the sum of forty-five

hundred (\$4500) dollars, and a hearing having been held and being fully apprised in the premises,

*It is hereby ordered* that the Branham plant is permitted to sell and the Lassen Electric Company to purchase all of the property of the Branham plant located in the county of Lassen for the sum of forty-five hundred (\$4500) dollars on the following conditions:

*First*—Said sum of forty-five hundred (\$4500) dollars not to be binding upon this or any other public authority in any rate fixing inquiry.

*Second*—The transfer of this property from its present owners to the Lassen Electric Company shall not be used directly or indirectly as a means to increase the rates within the territory now or hereafter to be served by the Lassen Electric Company.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of June, 1913.

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DECISION No. 720.

IN THE MATTER OF THE APPLICATION OF FERNANDO VALLEY DEVELOPMENT COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCKS AND BONDS.

Application No. 512.

IN THE MATTER OF THE APPLICATION OF TUJUNGA WATER AND POWER COMPANY TO SELL AND FERNANDO VALLEY DEVELOPMENT COMPANY TO PURCHASE THE PROPERTIES OF SAID TUJUNGA WATER AND POWER COMPANY.

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Application No. 513.

*Decided June 13, 1913.*

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ORDER OF DISMISSAL.

REPORT OF THE COMMISSION.

Applicants in each of the above entitled proceedings having on June 12, 1913, made written request to this Commission that the above applications be dismissed,

*It is hereby ordered* that the above entitled applications be and the same hereby are dismissed.

By order of the Railroad Commission.

Dated at San Francisco, California, this 13th day of June, 1913.



## DECISION No. 721.

IN THE MATTER OF THE APPLICATION OF CLOVERDALE LIGHT AND POWER COMPANY TO SELL ITS PROPERTY TO CALIFORNIA TELEPHONE AND LIGHT COMPANY AND OF CALIFORNIA TELEPHONE AND LIGHT COMPANY TO BUY THE SAME; TO MORTGAGE ITS PROPERTY; TO ISSUE STOCK; AND TO ISSUE THREE HUNDRED AND FIFTY THOUSAND DOLLARS OF BONDS.

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Application No. 498.

*Decided June 17, 1913.*

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Application of Cloverdale Light and Power Company to sell its property to the California Telephone and Light Company and of California Telephone and Light Company to issue stocks and bonds.

*Consolidation urged on grounds that, (1) there is not room enough in territory involved for two companies; (2) that California Telephone and Light Company is prepared to make additions and improvements and give more efficient service; (3) that Cloverdale Light and Power Company's territory is greatly in need of improvements which the Cloverdale company is not disposed to make, while the California Telephone and Light Company is prepared to spend over \$40,000 to develop this territory.*

*Held, That applicant's valuation placed on the property of Cloverdale Light and Power Company is excessive and would permit a capitalization far in excess of the present value of the property.*

*Held, Application granted California Telephone and Light Company to issue 500 shares of preferred stock par value of \$100 and to issue \$350,000 6 per cent thirty-year bonds; bonds to be used to pay outstanding notes and as part payment to Cloverdale Light and Power Company; no part of this issue to be used for paying "organization expenses"; Held, that California Telephone and Light Company set aside from income, annually, for ten years, \$2,500 in addition to sinking fund to be spent in increasing valuation from \$100,000 to \$125,000.*

*Held, Application of California Telephone and Light Company to issue 750 shares common stock, par value of \$100, as part payment on property of Cloverdale Light and Power Company denied.*

*Ambrose Gherini, for Cloverdale Light and Power Company.*

*Charles P. Cutten and William B. Bosley, for California Telephone and Light Company.*

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This application may be summarized as follows:

(1) Application of Cloverdale Light and Power Company to sell its property to California Telephone and Light Company for \$75,000 in cash, 500 shares of preferred stock and 750 shares of common stock of California Telephone and Light Company.

(2) Application of California Telephone and Light Company to buy the properties of Cloverdale Light and Power Company and to pay

therefor \$75,000 in cash, 500 shares of its preferred stock and 750 shares of its common stock.

(3) Application of California Telephone and Light Company to issue 500 shares of its preferred stock of the par value of \$100 per share and 750 shares of its common stock of the par value of \$100 per share.

(4) Application of California Telephone and Light Company to mortgage its property to Mercantile Trust Company of San Francisco as trustee to secure an authorized bond issue of \$5,000,000.

(5) Application of California Telephone and Light Company to issue \$350,000 of its 6 per cent thirty-year bonds and to use the proceeds in retiring existing indebtedness, to make additions to its property, and to provide \$75,000 to be applied on the purchase of the properties of the Cloverdale Light and Power Company.

Cloverdale Light and Power Company was incorporated in 1902. It owns and operates an electric distribution system located in Sonoma County, extending from Windsor on the south to Preston on the north. Current is purchased from the Snow Mountain Water and Power Company at Cloverdale. The company owns water rights on Big Sulphur Creek and also an uncompleted steam plant.

California Telephone and Light Company was incorporated on November 23, 1911, through the consolidation of the following companies: Sonoma Valley Light and Power Company, Russian River Light and Power Company, Clear Lake Consolidated Telephone and Telegraph Company, Northwestern Electric Company, and Healdsburg Telephone Company. It distributes and sells electricity for light and power and owns and operates a telephone system. Current is purchased from the Pacific Gas and Electric Company at Sonoma and Sebastopol and from the Snow Mountain Water and Power Company at Ukiah.

California Telephone and Light Company operates in Sonoma, Mendocino, Napa, and Lake counties. It distributes electricity for light and power over 176 miles of line, and in January of this year was serving 1,017 consumers, or an average of less than 6 consumers per mile of pole line. It operates 464 miles of telephone lines and served on January 1st of this year 1,419 telephone subscribers, or an average of approximately 3 subscribers per mile. It maintains telephone exchanges in the important centers of the territory it serves. A toll line service is maintained, connecting with local exchanges and with The Pacific Telephone and Telegraph Company's exchanges in Cloverdale, Santa Rosa, Sebastopol, and Ukiah.

The territory served by the California Telephone and Light Company is, for the most part, sparsely settled and includes no large cities. This territory is divided by the section served by the Cloverdale Light

and Power Company. The Cloverdale Light and Power Company owns 48 miles of pole lines and serves 448 consumers and 61 street lamps.

Cloverdale Light and Power Company submits a statement showing an authorized issue of 10,000 shares of capital stock of the par value of \$10 each, all of which are outstanding. Its indebtedness consists of a note in the sum of \$18,000 and sundry bills payable less than \$1,000. It submits a statement of earnings for the calendar year 1912 as follows:

|                                   |             |
|-----------------------------------|-------------|
| Sales of current .....            | \$23,843 17 |
| Profit on merchandise sales ..... | 253 80      |
| Gross earnings .....              | \$24,096 97 |
| Operating expenses .....          | 12,821 10   |
| Net income .....                  | \$11,275 87 |
| Interest .....                    | 1,183 66    |
| Balance .....                     | \$10,092 21 |

This represents the net profit for the year before charging off depreciation.

California Telephone and Light Company submits a statement showing authorized and outstanding stock as follows:

|   |                               |                         |
|---|-------------------------------|-------------------------|
| Six per cent cumulative preferred stock ..... | Authorized.<br>\$4,000,000 00 | Issued.<br>\$250,000 00 |
| Common stock .....                            | 6,000,000 00                  | 766,000 00              |

All stock is of the par value of \$100 per share.

In connection with its application, California Telephone and Light Company presents a statement of its indebtedness as follows:

|  |              |
|--|--------------|
| Mortgage notes due March 21, 1913, but which may be<br>extended for the period of one year ..... | \$150,000 00 |
| Unsecured notes payable .....  | 40,000 00    |
| Sundry notes payable .....   | 2,202 79     |
| Accounts payable .....   | 36,124 30    |
| Total indebtedness .....   | \$228,327 09 |

California Telephone and Light Company submits a statement of earnings for the year 1912, a portion of which is based upon estimate, as follows:

|                          |             |
|--------------------------|-------------|
| Gross earnings .....     | \$66,388 85 |
| Operating expenses ..... | 37,804 04   |
| Net earnings .....       | \$28,584 81 |
| Interest .....           | 9,733 84    |
| Balance .....            | \$18,850 97 |

This represents the balance for the year 1912 before deducting for depreciation.

It also submits a statement showing a surplus from operation during the period from March 19, 1912, to February 28, 1913, of \$17,788.89.

It is now proposed by California Telephone and Light Company and Cloverdale Light and Power Company that the former acquire all of

the property of the latter. The transfer is urged upon the ground (1) that such a consolidation would result in economies and provide for a uniform development in the territory involved without duplication of investment; (2) that Cloverdale Light and Power Company is not disposed to make an aggressive campaign for business while the California Telephone and Light Company is actively engaged in extending its operations and is prepared to expend additional sums for the purpose of serving more efficiently the section in which Cloverdale Light and Power Company now operates; (3) that it is the purpose of the California Telephone and Light Company to expend, during the next year, if authority be given, from \$40,000 to \$50,000 in the development of the territory now occupied by the Cloverdale Light and Power Company; (4) that extensions and improvements are urgently needed in the territory occupied by Cloverdale Light and Power Company, and that the present owners of the Cloverdale Light and Power Company are engaged in other business pursuits and are not desirous of greatly increasing their investment in these properties; (5) that through the consolidation, the California Telephone and Light Company will greatly increase its credit, and be able to borrow money on more advantageous terms.

While it may well be that such a consolidation would prove to be beneficial to both utilities and to the public as well, it is obvious that if the consolidation were to be made on terms unduly burdensome, it would be better for the rate payers that no such consolidation should be made. We must look, therefore, to the terms upon which it is proposed that California Telephone and Light Company shall acquire the properties of Cloverdale Light and Power Company.

It is proposed that California Telephone and Light Company shall give in exchange for these properties \$75,000 in cash, 500 shares of its 6 per cent cumulative preferred stock and 750 shares of its common stock. Cloverdale Light and Power Company is now capitalized at \$100,000, and we have before us a proposal in effect to increase this capitalization to \$200,000.

While it is in evidence that California Telephone and Light Company will develop the territory now served by the Cloverdale Light and Power Company to a greater extent than has heretofore been attempted, and that this, naturally, will redound to the advantage of the public generally, it should also be made clear that this advantage will not be more than offset by corresponding obligations which must be imposed to provide interest and dividends on the higher capitalization.

It has been urged that the properties of Cloverdale Light and Power Company are of such value that their capitalization at \$200,000 is not excessive. In support of this, there was offered in evidence a statement that there had been invested by the present owners in the properties of Cloverdale Light and Power Company the sum of \$132,981. It was

also urged that an extra element of value in the form of "going concern" should be recognized in the sum of \$22,186.72. This means a total value of \$155,167.72, and in addition to this a value of \$40,000 to \$50,000 was placed by the applicants herein upon certain water rights owned by Cloverdale Light and Power Company on Big Sulphur Creek.

I am frank to say that I am not at all impressed with this endeavor of the applicants herein to show such value as would justify a capitalization of \$200,000 upon these properties. In the first place, I find that this investment cost of \$132,981 includes certain abandoned property, including a flume which has been totally destroyed and a dam which has not been used for several years. The flume and the dam appear in the investment cost figures at \$47,960.08. Testimony was offered to the effect that the flume, which has since been destroyed, cost approximately \$23,500. I am inclined to believe that the investment cost figures should be reduced at least by the difference between the cost of the dam and the flume, namely, \$47,960.08 and the present value of the dam. It is in evidence that the present value of the dam is entirely problematical.

I can not agree with the method employed by the applicants herein to find a going concern value in the sum of \$22,186.72. This figure was reached by computing the interest on the money invested in the properties at 8 per cent per annum from 1903 to 1912 and deducting therefrom the accumulated surplus and the amount paid out in dividends. The resultant figure is offered as the cost of development. As a matter of fact, it merely represents the amount by which Cloverdale Light and Power Company failed, over a period of ten years, to earn 8 per cent upon the money invested in its property. While there is undoubtedly some merit in the contention that values must sometimes be recognized in the cost of business development, it is certainly manifest that to authorize a corporation to capitalize its losses over a period of ten years would lead inevitably to conclusions that could not be reconciled with the principles of sound finance.

I am unable also to find that the applicants have offered sufficient evidence upon which to base a value of the water rights on Big Sulphur Creek at \$40,000 or \$50,000. The witness who testified to a value of \$40,000 to \$50,000 for these water rights stated that it was merely his estimate, and that the water had not been measured.

The applicants have neglected in their estimates of value to provide for any depreciation, although it appears clearly in evidence that such depreciation has taken place.

Altogether, therefore, I find the valuation approximating \$200,000 as built up by the applicants herein, as heretofore outlined, one that I can not recommend.

Applicants submitted another form of value based upon the appraisal

by expert engineers. These engineers reported a reproduction value, for the properties of Cloverdale Light and Power Company, in the sum of approximately \$93,000. This figure represents the appraisal of the value of the properties reproduced new, and makes no allowance for depreciation. It appears, also, that this estimate is \$10,000 in excess of the original cost of the properties thus appraised. The estimate of \$93,000 included no provision for an uncompleted steam plant, a dam, a reservoir site and the water rights on Big Sulphur Creek. While sufficient evidence has not be presented to the Commission to enable it to form an exact measure of the value of this water right, the reservoir site, uncompleted steam plant and dam, I am of the opinion that it is at least clear that the total will not be of a value upon which I can recommend an authorization of stocks and bonds to the amount of \$200,000.

I am satisfied that the applicants herein are justified in urging upon the Commission the recognition of value for the uncompleted steam plant, dam, reservoir site and water rights on Big Sulphur Creek. While the evidence is not sufficient to enable me to fix a definite value for these properties, I shall, nevertheless, give consideration to these elements for the purposes of the present application in reaching a final determination in the matters herein involved. This determination will not, therefore, provide a definite finding as to value.

In reaching a conclusion as to the amount of securities, which I believe may be issued against these properties with fairness to the utilities involved and to the public, I shall also take into account the general financial condition of the California Telephone and Light Company, which, as the purchasing corporation, will assume all obligations to be incurred.

A physical valuation made by expert engineers of the properties of California Telephone and Light Company was submitted to the Commission showing a total of \$487,094. The liabilities of this company consist of certain notes and accounts payable, as previously indicated, in the sum of \$228,327.09. Although certain deductions probably should be made from the physical valuation of \$487,094 to allow for depreciation, and although the figures have not been subjected to check by the engineering department of this Commission, I am, nevertheless, of the opinion that the value of the property of California Telephone and Light Company is largely in excess of its liabilities and that it may readily be permitted to incur further obligations in the form of bonds in taking over the properties of Cloverdale Light and Power Company. The additional obligation thus incurred will be more than offset by the value of the property acquired.

At the same time, the measure of this additional mortgage obligation must be gauged by the other securities to be issued against the property, especially in view of the fact that, among such securities which it is proposed to issue, is \$50,000 of 6 per cent cumulative preferred stock.

I am compelled to conclude that the applicants have not presented sufficient evidence as to the value of the properties of Cloverdale Light and Power Company to predicate thereupon an issue of \$75,000 in bonds, \$50,000 in 6 per cent cumulative preferred stock and \$75,000 in common stock. I am persuaded further to this belief for the reason that there is at the present time outstanding \$250,000 of 6 per cent cumulative preferred stock and \$766,000 of common stock of California Telephone and Light Company.

I believe from an analysis of the evidence that a conservative capitalization for the properties of Cloverdale Light and Power Company should not exceed its present capitalization of \$100,000. However, in view of the fact that the values can not at this time be definitely established, and that the properties, as at present capitalized, carry in addition a note indebtedness of \$18,000; and in view also of the fact that California Telephone and Light Company, the purchasing corporation, has property largely in excess of its indebtedness, I shall recommend that, for the purposes of the purchase now under consideration, a capitalization be authorized not to exceed \$125,000; but I shall, at the same time, couple this with the further recommendation that this capitalization either be gradually reduced to a basis not exceeding \$100,000 or that additional moneys be put into the property from income within the next ten years so as to increase the investment by \$25,000. To that end, I shall recommend that the sale of these properties be authorized, and that California Telephone and Light Company be empowered to give therefor, to the stockholders of Cloverdale Light and Power Company, \$75,000 in cash and \$50,000 of its preferred stock.

I shall recommend that that portion of the application wherein California Telephone and Light Company asks for authority to issue \$75,000 of its common stock to the stockholders of the Cloverdale Light and Power Company, in part payment for these properties, be denied.

It is in evidence that the \$75,000 in cash which California Telephone and Light Company intends to pay to the stockholders of Cloverdale Light and Power Company is to be raised by issuing bonds. The further recommendation will be made that, in view of this authorization, California Telephone and Light Company shall, each year, for a period of ten years, invest from income \$2,500 in new property or shall retire from income in a period of ten years bonds of the face value of \$25,000. Necessarily, these requirements should be in addition to such conditions as may be imposed in the mortgage of California Telephone and Light

Company to Mercantile Trust Company of San Francisco or as may hereafter be imposed by this Commission in the form of a proper depreciation fund.

I am the more persuaded to this view for the reason that the stockholders of California Telephone and Light Company can, if they desire to carry out the terms of their agreement with Cloverdale Light and Power Company, transfer from their own holdings of common stock the necessary 750 shares of such common stock as to complete the transaction on the terms laid down in the contract of purchase.

I shall now pass to the remaining two features of this application: the request of California Telephone and Light Company that it be given authority to mortgage its property to Mercantile Trust Company of San Francisco, as trustee, to secure an authorized bond issue of \$5,000,000 and that it be given authority also to issue \$350,000 of its 6 per cent thirty-year bonds.

The applicant herein, California Telephone and Light Company, has filed with this Commission a copy of its proposed mortgage and deed of trust to Mercantile Trust Company of San Francisco, as trustee. This mortgage provides for an original issue of \$350,000 of bonds, evidently contemplating the purposes named in the application herein. The remaining bonds may, under the terms of this mortgage, be issued up to 90 per cent of the cost of new construction, and then only when the net earnings for twelve months, ending one month previous, shall have been  $1\frac{1}{4}$  times the interest on outstanding bonds plus  $1\frac{1}{4}$  times the interest of the bonds proposed to be issued.

A sinking fund is provided of  $1\frac{1}{2}$  per cent per year of outstanding bonds, beginning 1916 and ending 1925, and 2 per cent of outstanding bonds in each year thereafter. One half of the sinking fund payments per year may be diverted to additions and betterments. It is clearly set forth in the mortgage that bonds may be used only for additions and betterments and not for operating expenses. Bonds are callable at 107 $\frac{1}{2}$ . I find that the mortgage is a proper one and shall recommend that authority be given for its execution.

It is proposed by California Telephone and Light Company to issue at this time \$350,000 of the thirty-year 6 per cent bonds authorized under this proposed mortgage. A contract of sale has been made under which these bonds shall net the company 94 per cent of their face value.



It is proposed to use the proceeds from the sale of the bonds for the discharge of the following obligations:

|   |                     |
|---|---------------------|
| Thirty notes of the par value of \$5,000 each, bearing interest at the rate of 6 per cent, dated March 21, 1912, and payable March 21, 1913, with a year's extension privilege, issued under a mortgage to Mercantile Trust Company of San Francisco, as trustee----- | \$150,000 00        |
| Note dated October 21, 1912, to Mercantile National Bank of San Francisco, 6 per cent interest-----   | 10,000 00           |
| Note of December 16, 1912, to Mercantile National Bank of San Francisco, interest at 6 per cent-----  | 10,000 00           |
| Note of January 23, 1913, to Mercantile National Bank of San Francisco, interest at 6 per cent-----   | 5,000 00            |
| Note of February 15, 1913, to Mercantile National Bank of San Francisco, interest at 6 per cent-----  | 5,000 00            |
| Note of March 22, 1912, to C. T. Ryland, interest at 6 per cent-----  | 10,000 00           |
| Sundry notes payable -----  | 2,202 79            |
| Miscellaneous accounts payable -----  | 36,124 30           |
| <b>Total -----</b>  | <b>\$228,327 09</b> |
| To reimburse the treasury for money expended out of income for additions and betterments -----  | 17,788 89           |
| To be applied on purchase of Cloverdale Light and Power Company properties -----  | 75,000 00           |
| <b>Total -----</b>  | <b>\$321,115 98</b> |

It appears from the evidence, and from a check by the auditing department of this Commission, that the obligations above noted in the sum of \$228,327.09 were duly incurred for items which may properly be capitalized under the terms of the Public Utilities Act. It appears further that the company has expended from income, for additions and betterments, the sum of \$17,788.89, as stated, and, as previously stated, I shall recommend that authority be given to California Telephone and Light Company to use the sum of \$75,000, received from the sale of bonds, for the purpose of paying in part the purchase price of the properties of Cloverdale Light and Power Company.

If the bonds of California Telephone and Light Company sell at 94, as indicated, they will yield \$329,000, and if used as above indicated in the sum of \$321,115.98, there will be left \$7,884.02.

The applicant herein, California Telephone and Light Company, has submitted a program of new construction covering all of its territory and the Cloverdale district in the sum of \$265,900. It will be its purpose to expend the balance of \$7,884.02 upon some item in its program of new construction as placed before this Commission in Exhibit "J" to the total amount of \$265,900.

In connection with its application, California Telephone and Light Company has submitted a statement of organization expenses to the total amount of \$13,863.09. In this list appear certain items amounting to, approximately, \$9,000, which I regard as more properly chargeable to operating expenses than against capital investment. I shall, there-

fore, recommend, as a condition in the order in this application, that no part of the money to be received from the sale of the bonds herein authorized shall be applied upon the payment of any of these organization expenses unless such expenditure shall have been specifically authorized in a supplemental order of this Commission.

It also appears in evidence that the miscellaneous notes payable, to the amount of \$2,202.79, have been paid since the filing of this application and I shall, therefore, authorize the diversion of the money to be received from the sale of the bonds intended to pay these obligations to the company's treasury for reimbursement.

Obviously, public convenience can not be served by the transfer of these properties from Cloverdale Light and Power Company to California Telephone and Light Company unless the public is given at least equal service at rates at least equal to those now in effect. It was stated on behalf of California Telephone and Light Company that there was no present intention to raise the rates, but I believe that it should be inserted as a condition to this transfer that no such increase should be made.

I find that the purposes for which California Telephone and Light Company asks for authority to issue its stock and bonds are not, in whole or in part, chargeable to operating expenses or to income.

I find, further, that with such conditions as I have suggested, the public interest will be served by the transfer of these properties from Cloverdale Light and Power Company to California Telephone and Light Company.

I recommend that the application be granted, excepting as to that portion in which California Telephone and Light Company asks for authority to issue 750 shares of its common stock to Cloverdale Light and Power Company as part payment for its properties, and as to that portion I recommend a denial.

I, therefore, submit the following form of order:

**ORDER.**

Application having been made to this Commission by Cloverdale Light and Power Company for authority to sell its property, described in Exhibit "C" attached to the application herein, to California Telephone and Light Company, and by California Telephone and Light Company to buy the same; and by California Telephone and Light Company to execute a mortgage of its property to Mercantile Trust Company of San Francisco, as trustee, dated April 1, 1913, to secure an authorized issue of 6 per cent first mortgage bonds maturing April 1, 1943, a copy of which is on file with this Commission, marked Exhibit "L," and to which reference is hereby made; to issue 500 shares of its 6 per cent cumulative preferred stock of the par value of \$100 per share, and 750 shares of its common stock of the par value of \$100 per share;

and to issue \$350,000 of its first mortgage 6 per cent thirty-year bonds under its proposed mortgage to Mercantile Trust Company of San Francisco, as trustee, as above mentioned;

And a hearing having been held, and it appearing that the public interest will be served by the sale of the properties of Cloverdale Light and Power Company to California Telephone and Light Company, and that the purposes for which California Telephone and Light Company proposes to issue said 500 shares of 6 per cent cumulative preferred stock and said \$350,000 of said 6 per cent thirty-year first mortgage bonds are not, in whole or in part, chargeable to operating expenses or to income,

*It is hereby ordered* that Cloverdale Light and Power Company be given authority, and it is hereby given authority, to sell its properties, described in Exhibit "C" attached to the application herein, to California Telephone and Light Company, and California Telephone and Light Company is hereby authorized to purchase the same.

*It is further ordered* that California Telephone and Light Company be given authority, and it is hereby given authority, to execute a mortgage of its properties to Mercantile Trust Company of San Francisco, as trustee, dated April 1, 1913, to secure an issue of \$5,000,000 of first mortgage 6 per cent bonds maturing April 1, 1943, said mortgage to be in a form substantially like the copy of said mortgage filed with this Commission in the application herein and marked Exhibit "L."

*And it is further ordered* that California Telephone and Light Company be given authority to issue 500 shares of its 6 per cent cumulative preferred stock of the par value of \$100 per share, and to issue \$350,000 of its 6 per cent thirty-year bonds under the terms and conditions prescribed in said mortgage and deed of trust to Mercantile Trust Company of San Francisco, as trustee.

*It is further ordered* that the authority hereby given to Cloverdale Light and Power Company to sell its property and of California Telephone and Light Company to purchase the same is given upon the condition that said California Telephone and Light Company shall not increase any of the rates now established in the territory now occupied by Cloverdale Light and Power Company.

*It is further ordered* that the authority hereby given to Cloverdale Telephone and Light Company to issue said 500 shares of 6 per cent cumulative preferred stock and \$350,000 par value of said 6 per cent thirty-year bonds is given upon the following conditions and not otherwise:

I. Said stock shall be issued to Cloverdale Light and Power Company as part payment for the purchase of the properties of said Cloverdale Light and Power Company.

II. The said \$350,000 of bonds shall be sold so as to net California Telephone and Light Company not less than 94 per cent of their face value, plus accrued interest.

III. The proceeds from the sale of said \$350,000 of bonds shall be used for the following purposes and not otherwise:

(a) To discharge the following obligations:

|   |              |
|---|--------------|
| 1. Thirty notes of the par value of \$5,000 each, bearing interest at the rate of 6 per cent, dated March 21, 1912, and payable March 21, 1913, issued under a mortgage to Mercantile Trust Company of San Francisco, as trustee..... | \$150,000 00 |
| 2. Note dated October 21, 1912, to Mercantile National Bank of San Francisco, 6 per cent interest.....  | 10,000 00    |
| 3. Note of December 16, 1912, to Mercantile National Bank of San Francisco, interest at 6 per cent.....   | 10,000 00    |
| 4. Note of January 23, 1913, to Mercantile National Bank of San Francisco, interest at 6 per cent.....  | 5,000 00     |
| 5. Note of February 15, 1913, to Mercantile National Bank of San Francisco, interest at 6 per cent.....   | 5,000 00     |
| 6. Note of March 22, 1912, to C. T. Ryland, interest at 6 per cent....  | 10,000 00    |

Total ..... \$190,000 00

7. Miscellaneous accounts payable..... 36,124 30

(b) To reimburse the treasury for money expended out of the income for additions and betterments..... 20,000 00

(c) To be applied on purchase of properties of Cloverdale Light and Power Company..... 75,000 00

Total ..... \$321,124 30

(d) Such balance as may be left thereafter shall be applied upon new construction or additions and betterments to the properties of California Telephone and Light Company and specifically for any among the items appearing in Exhibit "J" filed in connection with the application herein.

IV. California Telephone and Light Company shall set aside from income each year, during the next ten years, beginning with the calendar year 1914, the sum of \$2,500, in addition to such sums as it may be required to set aside for sinking fund or depreciation under its mortgage and deed of trust and in addition to such sum as the Commission may hereafter require it to set aside for depreciation. Said sum of \$2,500 thus set aside annually shall be used either for the retirement of applicant's bonds to the amount of \$25,000 before 1925, in the manner provided under its mortgage for sinking fund purposes, or shall be invested annually in additions and betterments to its properties; and if said money is invested in additions and betterments to its properties, it shall not be urged as a basis upon which to apply for an issue of either stock, bonds, notes or other evidences of indebtedness.

V. California Telephone and Light Company shall report each year to this Commission the use to which it has devoted said sum of \$2,500 thus set aside annually from income.

VI. No portion of the money received from the sale of said bonds in the sum of \$350,000 shall be used by California Telephone and Light

Company for paying "organization expenses," as filed with this Commission as Exhibit "I" in the application herein, until it shall have received a supplemental order from this Commission authorizing the use of said money for the payment of any of said items listed among such organization expenses.

VII. California Telephone and Light Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the stock and bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month, it shall make verified reports to the Commission stating the sale or sales of said stock and bonds during the preceding month, the terms and conditions of sale, moneys or properties realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

VIII. The authority hereby given to Cloverdale Light and Power Company, and of California Telephone and Light Company to purchase the same, and the authority hereby given to California Telephone and Light Company to issue stock and bonds, shall apply only to such property as may be transferred from Cloverdale Light and Power Company to California Telephone and Light Company and to such stock or bonds as may be issued on or prior to December 31, 1913.

IX. The authority hereby given to California Telephone and Light Company to issue said stock and said bonds is contingent upon the payment of the fee prescribed by the Public Utilities Act.

X. Neither this Commission nor any other public authority shall be bound by the value of the property set out in the contract between Cloverdale Light and Power Company and California Telephone and Light Company, nor by any finding of value of the properties of Cloverdale Light and Power Company and California Telephone and Light Company which may appear herein.

*It is hereby ordered* that the application of California Telephone and Light Company to issue 750 shares of its common stock of the par value of \$100 per share to Cloverdale Light and Power Company in part payment for the properties of said Cloverdale Light and Power Company be, and it is hereby, denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1913.

DECISION No. 722.

GRAYSON-OWEN COMPANY  
vs.  
SOUTHERN PACIFIC COMPANY.

Case No. 356.

*Decided June 17, 1913.*

Complaint of Grayson-Owen Company to recover from Southern Pacific Company reciprocal demurrage in the sum of \$885. Complainant ordered certain cars from defendant, Southern Pacific Company. The cars were not delivered at the time specified or within time to avoid claim for demurrage.

*Held*, That complainant is entitled to reciprocal demurrage in the sum of \$654.

*J. O. Bracken*, for Complainant.

*H. C. Booth*, for Defendant.

## REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is a case in which complainant asks to recover from defendant reciprocal demurrage in the sum of eight hundred and eighty-five dollars. The basis upon which the claim is made, as set forth in the complaint and supported by testimony at the hearing, is as follows:

On August 24, 1912, complainant, Grayson-Owen Company, through its treasurer, J. C. Mitchell, ordered, from the defendant carrier, twenty-one cars to be delivered three cars per day, such delivery to begin August 26th. These cars were ordered by complainant of the agent of the defendant at Hamilton, but were to be delivered at the non-agency station of Nord. There was some slight conflict in the testimony of Mr. Mitchell and that of defendant's agent at Hamilton as to whether the cars were ordered first by telephone and afterwards confirmed by Mr. Mitchell personally seeing the agent, or whether Mr. Mitchell saw the agent when he first ordered the cars and afterwards telephoned for information concerning them. However, that is not material, as the evidence of both these witnesses shows clearly that the cars were ordered on Saturday, August 24th.

The jurisdiction of the non-agency station at Nord does not lie with the agency station of Hamilton, where these cars were ordered, but with the agency station of Vina, and the agent at Hamilton testified that, upon receipt of the order from Mr. Mitchell, or shortly thereafter, he telegraphed the order to the agent at Vina. Copy of this telegram was read into the record and disclosed the fact that he simply wired the agent at Vina to order, for J. C. Mitchell of the Grayson-Owen Company, twenty-one cars to be delivered three cars per day, but did

not state when such delivery was to begin. The telegram discloses that the cars were to be loaded with hay destined to Stockyards, California.

Mr. Mitchell testified that he had arranged with the farmers to haul hay with which he proposed to load the cars in question to Nord Station, such delivery by the farmers to begin August 26th; that he made arrangements to have sufficient hay delivered each day, commencing August 26th, to load the three cars which he had ordered per day, thereby enabling him to load the cars directly from the wagons at fifty cents per ton less expense than he would incur if the hay were first dumped on the ground and then loaded on the cars; that such deliveries of hay were made by the farmers to Nord, but that the cars ordered were not furnished, the first cars not being available until August 30th and the total number of twenty-one not being finally furnished until the last of September; that as a result of such failure to deliver the cars ordered, it was necessary to unload the hay from the wagons to the ground, and later load it on the cars when they were available; that such method of loading entailed an additional cost of fifty cents per ton, and that, in addition to that, a rainstorm occurred by which a large amount of hay was greatly damaged.

In view of these alleged facts, all of which were testified to by complainant and most of which were not controverted by testimony of defendant, complainant asks in the complaint for reciprocal demurrage in the sum of eight hundred and eighty-five dollars.

At the hearing complainant admitted that the prayer for reciprocal demurrage comprehended demurrage for Sundays and legal holidays which should be eliminated, and asked that complaint be considered amended in that respect.

In its answer, defendant sets up three reasons why complainant can not legally ask for reciprocal demurrage in this case: first, the answer alleges that the cars ordered by complainant were delivered at the non-agency station of Nord, but as there was no one there to take charge of them the cars were appropriated by other shippers; second, that there was a car shortage during the period mentioned, to wit, August and September, 1912, to such an extent as to make it impossible for defendant to supply the cars in question; third, defendant claims that complainant can not legally ask for reciprocal demurrage without having first filed a bond with defendant as provided by demurrage rules, and that complainant had been advised of the rule and of the necessity of filing such bond, the defendant having, on the 8th day of May, 1911, furnished complainant with a copy of Tariff C. R. C. No. 2-C covering uniform demurrage rules, which rules set forth the necessity of shippers filing a bond with carriers if they expect to make claims for reciprocal demurrage.

I shall consider these three reasons advanced by defendant, why reciprocal demurrage should not be assessed in this case, in the order in which they are here mentioned: first, the allegation in the answer that the cars ordered were delivered at the non-agency station of Nord. This allegation of the answer was not supported by testimony at the hearing and, in my judgment, need not be considered in this opinion and order, as complainant testified that the hay was being delivered on August 26th, and that complainant's employees were there ready to load the cars; second, in support of this testimony, statements were filed showing that a car shortage did actually exist on the Sacramento division, in which division the station in question is located. The testimony of defendant also showed that there was a shortage both of box cars and of stock cars, both of which are at times used to transport hay, on the divisions adjoining the Sacramento division, namely, the Stockton and Western division. On the Pacific system, generally, the reports showed a slight surplus of cars, so slight, however, that defendant claimed that it was practically a shortage.

The fact that defendant claims car shortage as a part of its defense is worthy of notice when taken in connection with the allegation in the answer that cars ordered by complainant were delivered at Nord Station and appropriated by other shippers.

I may say in passing, that, while one of the principal reasons for charging demurrage is to release equipment, it is quite as true that one of the principal reasons for charging reciprocal demurrage is to induce carriers to furnish sufficient equipment for ordinary demands. It is fair to assume that from the experiences of former years the defendant must have been aware that there was liable to be a car shortage at the period mentioned, and that it was aware of that fact and realized the necessity incumbent upon it to furnish equipment for ordinary demands is evidenced by the fact that, as shown by the testimony in this case, defendant had sought to prepare for such shortage by ordering six thousand new cars sometime previous to the period comprehended in this case.

The witnesses of the defendant, Southern Pacific Company, testified that to have compelled defendant to furnish the cars ordered by complainant at the particular time in question would probably have interfered with interstate commerce in that its ability to furnish cars ordered for interstate transportation would have been limited or reduced by the measure of the number of cars ordered by complainant.

Rule 3, paragraph (b) of the Uniform Rules for Demurrage and Reciprocal Demurrage, contained in Order No. 2 of this Commission, provides as follows:

"Whenever it shall appear to the satisfaction of the Commission



that the failure of a railroad to furnish a car or cars for loading within the time fixed by these rules, or the failure of the shipper or consignee to load or unload the same was due to causes beyond the control of such carrier, shipper or consignee, no payment shall be required to be made on account of such delay."

It may well be that instances will be presented to the Commission where the circumstances will justify the Commission in relieving either carrier or shipper from liability to demurrage or reciprocal demurrage, but, in my judgment, the circumstances of this case do not warrant such action by the Commission, particularly in view of the allegation, above referred to, found in the answer of defendant, that the cars ordered were delivered and appropriated by other shippers. Each case of this kind presented to the Commission must necessarily depend upon and be judged by the facts surrounding it.

The third reason advanced by defendant why reciprocal demurrage should not be assessed against it comprehends, in my judgment, the basis upon which this opinion and order must rest. Both shippers and carriers are subject to the law and are supposed to understand what the law is, and also to understand the effect of rules and regulations regularly made and adopted under the authority of the law. This Commission, while an instrument to be used to bring about the equitable enforcement of the law, is equally subject thereto with the shippers and carriers, and its opinions and orders must conform to the law and to such rules and regulations made under the law. .

Section 45 (a) of the Public Utilities Act gives to the Commission the "power to provide by proper rules and regulations the time within which all railroad corporations shall furnish, after demand therefor, all cars, equipment and facilities necessary for the handling of freight in carload and less than carload lots, the time within which consignors or persons ordering cars shall load the same, and the time within which consignees or persons to whom freight may be consigned shall unload and discharge the same and receive freight from the freight rooms, and to provide penalties to be paid for failure on the part of the railroad corporations, consignors and consignees to conform to such rules. Charges for demurrage shall be uniform, so that the same penalty shall be paid by both shipper or consignee and railroad corporation for an equal number of cars for each day for which demurrage is charged."

In the exercise of this power thus given to the Commission, General Order No. 2, superseding Order No. 1, approved March 28, 1911, and effective May 1, 1911, covering the question of demurrage and reciprocal demurrage in the State of California, was promulgated by this Commission. Rule 12 (c), page 4 of said General Order No. 2 reads as follows:

*"Reciprocal Demurrage Bond.* Any carrier that fails to place cars under the provisions of this rule, shall pay to the shipper \$3.00 per day for the number of cars in the shipper's order not so placed, until such time as such shipper's order shall be filled, unless released at the shipper's request; provided, however, that any shipper who desires to take advantage of this rule must file with the carrier from whom he desires to order his cars a good and sufficient bond in the sum of twenty (20) dollars, if he desires to order but one car, and fifteen (15) dollars for each additional car. This bond shall be security for the payment on behalf of the shipper to the carrier for the use of any car or cars ordered by such shipper which shall be set out by the carrier and not used by the shipper, at the rate of \$3.00 per day, computed from the time the car is set out. Each carrier shall furnish, on request of any shipper, and shall keep at all of its agency stations, blank forms of bonds, for the purposes herein set out, which forms shall be submitted to this Commission and shall bear the mark of its approval. When any shipper who does not have on file with such carrier a bond as provided herein, shall order a car or cars, it shall be the duty of the agent of such carrier receiving such order to notify such shipper of the provisions of this rule, and only after such notification and the failure of the shipper to file such bond, shall the carrier be exempted from the payment to the shipper for failure to furnish cars as herein provided."

As before stated, defendant showed by testimony that it had previously notified complainant in writing of the necessity of filing a bond if complainant expected to exercise the right of claiming reciprocal demurrage, such notification having been given in May, 1911. But under the rule a further duty devolves upon the defendant, namely, to notify shippers who order car or cars at the time such orders are placed of the necessity of filing such bond if they expect to exercise the right of claiming reciprocal demurrage. In the language of the order above quoted: "only after such notification and the failure of the shipper to file such bond shall the carrier be exempted from the payment to the shipper for failure to furnish cars as herein provided."

Mr. Plank, agent for defendant, who received the order for the cars in question, testified that he did not think of this particular rule at the time these cars were ordered. Of the reciprocal demurrage law of California, and of its operation under the rules made by this Commission under the authority conferred upon it by the Public Utilities Act, it may be said that it has admittedly had the effect of releasing carriers' equipment and in that way has been of decided advantage to carriers. Also, that the per diem demurrage charge is sufficient to recompense carriers for equipment held overtime, and reports of the Pacific Car Demurrage Bureau show that, in the exercise of their rights

and privileges under the law and demurrage rules, carriers have collected such sums as were their due.

I am of the opinion that the circumstances of the case are such as to clearly entitle complainant to reciprocal demurrage, and I, therefore, find as a fact (1) that complainant, Grayson-Owen Company, did, on August 24, 1912, order certain cars from the defendant Southern Pacific Company, specifying the time at which said cars were to be delivered at Nord Station; (2) that the agent of the defendant, Southern Pacific Company, did not, at the time when such cars were ordered, notify said Grayson-Owen Company, complainant, that it was necessary that it should file a bond with the defendant, Southern Pacific Company, as provided in Rule (c) of the Uniform Rules for Demurrage and Reciprocal Demurrage; (3) that the defendant, Southern Pacific Company, did not deliver cars so ordered at the time specified or within the time to avoid this claim for reciprocal demurrage; (4) that complainant, Grayson-Owen Company, is entitled to recover from the defendant, Southern Pacific Company, reciprocal demurrage in the sum of six hundred and fifty-four (654) dollars; (5) that the statement following shows the times at which the cars were ordered and the reciprocal demurrage accruing by reason of non-delivery:

| Individual cars |        | AUGUST |    |    |    | SEPTEMBER |    |    |    |   |   |   |   |   |   |   |   | Demurrage |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     |         |            |
|-----------------|--------|--------|----|----|----|-----------|----|----|----|---|---|---|---|---|---|---|---|-----------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|---------|------------|
| Initial         | Number | 24     | 25 | 26 | 27 | 28        | 29 | 30 | 31 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9         | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29  | In days | Amount due |
| TNO             | 10810  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 3  | \$9 |         |            |
| TNO             | 11603  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 3   | 9       |            |
| UP              | 68314  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 4   | 12      |            |
| UP              | 72363  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 6   | 18      |            |
| SP              | 68690  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 6   | 18      |            |
| SP              | 70131  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 6   | 18      |            |
| SP              | 70541  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 5   | 15      |            |
| UP              | 67857  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 5   | 15      |            |
| UP              | 20760  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 9   | 27      |            |
| SP              | 73690  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 8   | 24      |            |
| UP              | 89498  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 13  | 39      |            |
| TNO             | 12970  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 12  | 36      |            |
| OWRN            | 10765  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     | 13      | 39         |
| TP              | 7313   | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     | 13      | 39         |
| UP              | 66487  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     | 13      | 39         |
| L&SF            | 121945 | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     | 17      | 51         |
| SP              | 88824  | *      | +  | +  | +  | +         | +  | +  | +  |   |   |   |   |   |   |   |   |           |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     |         |            |

Sundays and legal holidays excluded in computing demurrage.

In determining the amount of demurrage to which the complainant is properly entitled, I have considered, (1) the time the order for the cars was placed with the carrier; (2) the time from which the "free time," in which to place cars ordered, began to run; (3) the day on which cars were "placed" so as to be available for loading; and (4) the time of the day at which cars were so placed.

It appears conclusive from the testimony that the cars were ordered on Saturday, August 24, 1912, and therefore the free time for furnishing the first three cars began to run from 7 o'clock a. m. Monday, August 26, 1912, Sunday being excluded, in accordance with the provisions of Rule No. 1 of General Order No. 2.

I am of the opinion that the conductor's train report furnishes the more accurate date of placement of the cars than the bills of lading which were relied upon by the complainant as furnishing this information, and I have therefore accepted the statement of the conductor's report of cars placed, as furnished by defendant, as setting out the correct dates of placement, except as to one car—St. L. & S. F. 121945—which was set out at Nord, and had to be unloaded before being available for loading by the complainant. In this case, as the car was on hand loaded several days at Nord, and the date of its release uncertain, I have used the date of placement as furnished by the complainant.

The question of whether the day on which the car was placed should be considered in computing the demurrage, should, in my opinion, be determined by the time of the day the car is actually placed for loading. That is, if a car is placed prior to 7 a. m. and is available for loading at that time, demurrage should not accrue for that day. If, on the other hand, a car is placed after 7 a. m., as were the cars in this particular case, as shown by exhibits placed in evidence by the defendant, except St. L. & S. F. 121945, which is considered as having been available for loading at 7 a. m. on the day on which it is shown as placed, then, in my opinion, it is proper to allow demurrage for the day on which the cars were so placed but were not available for loading until after 7 o'clock a. m.

I recommend the following order:

**ORDER.**

The Grayson-Owen Company, a corporation, having filed complaint against the Southern Pacific Company asking for reciprocal demurrage on account of not having received cars as ordered, as explained in the foregoing opinion; and the case having been regularly heard and considered, and it having been found as a fact (1) that complainant, Grayson-Owen Company, did, on August 24, 1912, order certain cars from the defendant, Southern Pacific Company, specifying the time at which said cars were to be delivered at Nord Station; (2) that the agent of

the defendant, Southern Pacific Company, did not, at the time when such cars were ordered, notify said Grayson-Owen Company, complainant, that it was necessary that it should file a bond with the defendant, Southern Pacific Company, as provided in Rule (c) of Uniform Rules for Demurrage and Reciprocal Demurrage; (3) that the defendant, Southern Pacific Company, did not deliver cars so ordered at the time specified or within the time to avoid this claim for reciprocal demurrage; (4) that complainant, Grayson-Owen Company, is entitled to recover from the defendant, Southern Pacific Company, reciprocal demurrage in the sum of six hundred and fifty-four (654) dollars; (5) that the statement following shows the times at which the cars were ordered and the reciprocal demurrage accruing by reason of non-delivery:

Statement showing cars ordered and demurrage accruing.

| Individual cars |        | AUGUST |    |    |    |    |    |    | SEPTEMBER |   |   |   |   |   |   | Demurrage |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |         |            |
|-----------------|--------|--------|----|----|----|----|----|----|-----------|---|---|---|---|---|---|-----------|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|---------|------------|
| Initial         | Number | 24     | 25 | 26 | 27 | 28 | 29 | 30 | 31        | 1 | 2 | 3 | 4 | 5 | 6 | 7         | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | In days | Amount due |
| TNO             | 10910  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 3  | \$9     |            |
| TNO             | 11683  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 3  | 3       |            |
| UP              | 66314  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 4  | 12      |            |
| UP              | 72363  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 6  | 18      |            |
| SP              | 69690  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 6  | 18      |            |
| SP              | 70131  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 6  | 18      |            |
| SP              | 70541  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 5  | 15      |            |
| UP              | 67857  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 5  | 15      |            |
| SP              | 20760  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 9  | 27      |            |
| UP              | 73600  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 8  | 24      |            |
| SP              | 89408  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 24 | 24      |            |
| TNO             | 12970  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 39 | 39      |            |
| OWRN            | 10765  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 12 | 36      |            |
| TP              | 7313   | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 13 | 39      |            |
| UP              | 66487  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 13 | 39      |            |
| St. L&SF        | 121945 | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 13 | 39      |            |
| SP              | 88824  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 17 | 51      |            |
| UP              | 68425  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 17 | 51      |            |
| KCS             | 15030  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 19 | 57      |            |
| TNO             | 12356  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 19 | 57      |            |
| SP              | 76564  | *      |    |    |    |    |    |    |           |   |   |   |   |   |   |           |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 19 | 57      |            |
|                 |        | 24     | 25 | 26 | 27 | 28 | 29 | 30 | 31        | 1 | 2 | 3 | 4 | 5 | 6 | 7         | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 218     | \$654      |

LEGEND: \*Day on which cars were ordered.  
+Day on which cars were wanted.  
+Day on which cars were due.  
+Day on which cars were furnished.  
Sundays and legal holidays excluded in computing demurrage.

*It is hereby ordered* that, within sixty (60) days from date hereof, said Southern Pacific Company pay to said Grayson-Owen Company the sum of six hundred and fifty-four (654) dollars, representing the amount of reciprocal demurrage arising from the failure of the Southern Pacific Company to furnish cars to the Grayson-Owen Company as ordered, as shown by the testimony in this case as set forth in the foregoing opinion, the said sum of six hundred and fifty-four (654) dollars being computed and arrived at as heretofore in the opinion specified.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of June, 1913.

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DECISION No. 723.

IN THE MATTER OF THE APPLICATION OF NEVADA  
COUNTY NARROW GAUGE RAILROAD COMPANY FOR  
THE ISSUANCE OF BONDS.

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Application No. 486.

*Decided June 18, 1913.*

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Application of Nevada County Narrow Gauge Railroad to issue \$500,000, 5 per cent thirty-year gold bonds, money to be used in retiring outstanding bonds and for changing road from narrow to standard gauge. *Held*, application granted with certain conditions.

*Jesse H. Steinhart and E. S. Heller*, for Applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application by Nevada County Narrow Gauge Railroad Company for an order authorizing the issue of \$500,000 face value thirty-year gold bonds bearing interest at the rate of five per cent per annum, to be issued in the denominations of \$1,000 each, and authorizing it to mortgage its property as security for the payment of said bonds.

Applicant owns and operates a narrow gauge steam railroad, extending from Colfax, Placer County, to Nevada City, Nevada County, a distance of 20.41 miles. In addition applicant owns and operates sidings and other tracks of 4.07 miles.

65—RRD



The condition of the capitalization of applicant is as follows:

|  |  |              |
|--|--|--------------|
| <b>Stock:</b>                                |  |              |
| Authorized 4,000 shares at \$100-----        |  | \$400,000 00 |
| Issued -----                                 |  | 250,200 00   |
| <b>Bonds, interest 7 per cent:</b>           |  |              |
| Authorized -----                             |  | 250,000 00   |
| Outstanding -----                            |  | 162,000 00   |
| Other indebtedness as of April 10, 1913----- |  | 14,498 49    |

Applicant proposes to change its system from a narrow gauge to a standard or broad gauge railroad, and for that purpose will use the proceeds from the sale of the bonds herein asked to be authorized.

The estimated cost of such change, including the purchase of standard equipment, is \$361,519.25.

Applicant has submitted an inventory and estimate of cost which is somewhat different than that contained in the application. What is here said is based upon the inventory as filed. This inventory and estimate of cost has been checked by the engineering department of this Commission, and has been found to be a reasonable estimate of the cost of the proposed additions and improvements.

This Commission has, in Case No. 178, initiated proceedings to ascertain the value of the property of Nevada County Narrow Gauge Railroad Company, and the engineering department of this Commission has prepared and filed in such proceedings an estimate of such value. This report states the depreciated reproduction value or present value of said property as of date June 30, 1912, at \$555,184.62.

While no hearing has been had in Case No. 178, the report of the Commission's engineering department may be taken as a basis upon which to arrive at a conclusion as to the relation between the capitalization of applicant and the value of its property.

Applying the principles used in making up the valuation above noted, the engineering department of this Commission has estimated the actual addition to the value of applicant's plant by the expenditure of the money herein proposed, after deducting such amounts as should be charged to replacements, of \$217,343.23. This makes a total present plant value of \$772,527.87.

As applicant has now outstanding \$162,000 face value of bonds, and after offsetting these proposes to increase the amount of such outstanding bonds by \$338,000, we have a margin of \$272,527.87, plant value over outstanding bonds. If we add outstanding stock and the proposed amount of bonds, we have a total amount of \$750,000 face value of stock and bonds as against \$772,527.87 of property, leaving a margin of property over total capitalization of \$22,527.87.

The net revenue of applicant was for the year ending June 30, 1912, \$30,442.47. Deducting from this \$5,760 for taxes and \$12,285 interest on funded debt, leaves net \$12,397.47.

The added interest burden if this application is granted will be \$16,900, which leaves an apparent deficit, if the earnings continue the same as for 1912 and the earnings necessary to meet the bond interest if this application is granted, of \$4,502.53. However, as there undoubtedly will be an increase in the traffic of applicant and a more economical handling of its business, it is fair to assume that applicant's increased earnings will safely take care of the additional bond interest.

The standard gauging of this railroad will permit of the interchange of equipment between this and other railroads, and the more economical operation of applicant's road, and in every way be of benefit, not only to applicant, but to the public.

Applicant has prepared a form of trust deed which it has proposed to execute, mortgaging its property to secure the payment of the bonds to be issued, and this mortgage or trust deed provides that the \$162,000 face value of bonds now outstanding shall be redeemed and paid from the proceeds of a like amount of new issue of the bonds, and that no further issue of said underlying bonds shall be made.

The corporate life of applicant at present will terminate in 1924, and it is proposed to extend such corporate life by appropriate proceedings, to January 1, 1963.

I recommend that the application be granted upon the condition precedent that the proceedings to lengthen the corporate life of applicant be completed so as to extend beyond the maturity of the bonds herein asked to be authorized.

I submit herewith the following form of order:

#### ORDER.

Application having been made to the Railroad Commission of the State of California by Nevada County Narrow Gauge Railroad Company for an order authorizing the issue by said company of \$500,000, face value, thirty-year gold bonds, bearing interest at the rate of five per cent per annum, to be issued in the denominations of \$1,000 each, and authorizing it to mortgage its property as security for the payment of said bonds,

And a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said bonds is necessary and reasonably required by said company for the refunding of its indebtedness and the acquisition of property and the construction, extension and improvement of its facilities, and that the purposes for which the proceeds of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income, and that it is proper that said Nevada County Narrow Gauge Railroad Company mortgage its property for the purpose of securing the payment of said bonds,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by Nevada County Narrow Gauge Railroad Company of \$500,000, face value, thirty-year gold bonds, bearing interest at the rate of five per cent per annum, to be issued in the denominations of \$1,000 each, and said Nevada County Narrow Gauge Railroad Company is further authorized to mortgage its property as security for the payment of said bonds.

Said bonds to be issued under and in pursuance of the terms of a mortgage or deed of trust, which shall be in substantially the same form as the copy of such proposed deed of trust on file herein.

Said bonds shall be issued upon the following conditions and not otherwise, to wit:

1. Nevada County Narrow Gauge Railroad Company shall sell the bonds hereby authorized so as to net said company not less than 85 per cent of the face value thereof, plus accrued interest at the date of their delivery to the purchaser.

2. The proceeds from the sale of said bonds shall be used for the following purposes only:

a. To pay off and retire \$162,000 face value of bonds of said company now outstanding.

|  |             |
|--|-------------|
| b. Grading—widening cuts and embankments.....              | \$20,000 00 |
| Tunnels—enlarging present section.....                     | 16,500 00   |
| Steel bridges—reinforcing present structures.....          | 21,000 00   |
| Trestles—reinforcing present structures.....               | 5,000 00    |
| Ties—replacing all ties.....                               | 45,000 00   |
| Rails—replacing all rails with 60-lb section.....          | 103,300 00  |
| Frogs and switches—replacing with new section.....         | 6,050 00    |
| Track fastenings—replacing all fastenings.....             | 13,252 00   |
| Ballast .....  | 16,560 00   |
| Tracklaying and surfacing.....                             | 25,250 00   |
| Station buildings .....                                    | 500 00      |
| Platforms, walks, etc.....                                 | 1,000 00    |
| Shop buildings, etc.—enlarging present facilities.....     | 2,500 00    |
| Turntables, etc.—enlarging present facilities.....         | 2,500 00    |
| Miscellaneous structures—enlarging present facilities..... | 500 00      |
| Water stations—enlarging present facilities.....           | 500 00      |
| Fuel stations—enlarging present facilities.....            | 250 00      |

|   |              |
|---|--------------|
| Total of above.....                     | \$279,682 00 |
| Engineering—5 per cent of above.....    | 13,983 10    |
| Transportation of men and material..... | 9,500 00     |
| Steam locomotives .....                 | 15,000 00    |
| Passenger cars .....                    | 6,500 00     |
| Freight cars .....                      | 16,250 00    |

|                                       |              |
|---------------------------------------|--------------|
| Total of above.....                   | \$340,895 10 |
| Law expenses—1 per cent of above..... | 3,408 95     |

|  |              |
|--|--------------|
| Total of above.....                    | \$344,304 05 |
| Contingencies—5 per cent of above..... | 17,215 20    |

|                   |              |
|-------------------|--------------|
| Grand total ..... | \$361,519 25 |
|-------------------|--------------|

For a more detailed description of the above items, reference is hereby had to Exhibit H, on file herein.

3. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of said bonds hereby authorized to be issued, and on or before the 25th day of each month the company shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the sale or disposition of such bonds during the preceding month, the terms and condition of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

4. As a condition precedent to the effectiveness of this order applicant shall submit to the Commission satisfactory evidence that its corporate life has been extended beyond the time of maturity of the bonds herein authorized to be issued.

5. The authority hereby given to issue such bonds shall apply only to bonds issued by said company on or before the 1st day of May, 1914.

6. The payment of the minimum fee prescribed in section 57 of the Public Utilities Act shall be a condition precedent to the effectiveness of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of June, 1913.

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DECISION No. 724.

IN THE MATTER OF THE APPLICATION OF THE SANTA CLARA WATER AND IRRIGATING COMPANY FOR AN ORDER AUTHORIZING INCREASE OF RATES.

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Application No. 136.

*Decided June 18, 1913.*

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Application of Santa Clara Water and Irrigating Company for authorization to increase rates for water. Applicant, under various agreements, distributes free, or at rates greatly below schedules, a considerable portion of its total supply. *Held*, The case be reopened for introduction of additional evidence.

*Hiatt & Selby*, for Applicant.

*Don C. Boroker*, for Users and Consumers of Water.

*Geo. E. Farrand*, for Thermal Belt Water Company.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application by Santa Clara Water and Irrigating Company

for an order authorizing an increase in rates for water distributed in Ventura County, California.

Applicant is distributing 200 miner's inches of water under a contract of lease for the sum of \$800 per annum, and 200 inches of water free, under a reservation contained in a deed, and water free to irrigate 100 acres of land. The remaining water of applicant is distributed to consumers at schedule rates, the said rates being higher than the \$800 per annum charged for the 200 inches of water above mentioned.

As applicant has been distributing free, or at rates very much below its schedule charged regular consumers over 400 inches of water, which is a very considerable portion of its total supply, and as the reason given by applicant for raising rates is that the total income from the sale of water is not sufficient to pay operating expenses, and if all of the water distributed by applicant were subjected to the schedule rates now in force its income would be considerably increased, it becomes necessary to first determine whether all or a part of the water now being distributed free, or at a low rate by applicant, should be subjected to the schedule rates charged other consumers.

An agreement, called a lease, was executed, dated September 1, 1903, under which the Farmers' Ditch Irrigating Company (the predecessor of applicant), agreed to deliver to Thermal Belt Water Company at the pumps of the latter in the irrigating system of the former, a continuous flow of 200 miner's inches of water during the irrigating season of each year, commencing the 1st day of November, 1903, and ending the 31st day of October, 1942, for the yearly rental of \$800, payable in November for the year just expired.

Applicant has been furnishing water under said contract since its execution, and now is furnishing water at the rate therein specified, to wit: \$800 per annum for 200 miner's inches of water. This price is very much lower than the price charged other consumers under the schedule of rates now in effect.

This contract falls squarely within the rule laid down in the case of the application of James A. Murray and Ed Fletcher for an order authorizing and permitting an increase in the rentals, etc., for furnishing water, Decision No. 536, wherein, after an exhaustive review of the authorities, it was held that contracts made prior to the amendment of the constitution in 1911 and the subsequent passage of the Public Utilities Act, which contracts fixed the price or rate at which a utility service should be sold, were subject to the power of the Railroad Commission to fix rates for such utility service, regardless of the terms of such contracts. Therefore, the 200 inches mentioned in this contract should be subject to the rates fixed for other consumers.

By conveyances on November 10, 1871, and August 10, 1881, Antonio Schiappa Pietra conveyed to the Santa Clara Water and Irrigating

Company rights of way over his property for ditches now a part of the distributing system owned by applicant. It was stipulated in said conveyances that Antonio Schiappa Pietra should have free use of water for his stock and cattle and for 100 acres of land to be thereafter selected. This land was afterward selected and since said time applicant has been furnishing water for irrigating said land free. As in the case of the 200 inches of water just above mentioned, it is to be determined whether this water must be charged for at schedule rates or whether there shall be a perpetual free use of it to the owners of the 100 acres of land. The free use of this water was a part of the consideration given for the granting of the rights of way and easements over land. Hence it is in the same situation as other contracts which provide the price for the delivery of water, although the price here was not stated in money. This agreement falls within Decision No. 536 above mentioned, and, therefore, the water heretofore furnished the 100 acres free should be subjected to the rates fixed for other consumers.

On the 21st day of September, 1904, the Farmers' Ditch Irrigating Company conveyed to Leopolda Schiappa Pietra all of its irrigating system, including water and water rights, but there was excepted from this conveyance 200 inches of water and the right to divert that amount of water from the Santa Clara River and a right of way over the flumes, ditches, dams, etc., to divert said quantity of water and convert the same to the pumping station of said Farmers' Ditch Irrigating Company. This 200 inches of water is to be delivered free of cost. Said water, it was agreed, should only be used on certain lands designated in said conveyance.

The property thus conveyed to Leopolda Schiappa Pietra was thereafter transferred by him to applicant and applicant has ever since and now is furnishing said 200 inches of water free through its system to the pumping plant of the successors in interest of the Farmers' Ditch Irrigating Company.

This raises the question, whether by the reservation aforesaid, the beneficiaries thereof may forever obtain 200 inches of water free or be subject to the rates specified for other consumers.

In the case of *Leavitt vs. Lassen Irrigation Company*, 157 Cal. 82, it was held that a private use could not be carved out of a public use of water. That if water was appropriated for a public use and thereafter a part of such water should be reserved for a private use, that such reservation was void. As was said in that case:

"Treating Leavitt's appropriation as being wholly and entirely for public use he, the owner of the system, was but an instrumentality for the distribution of the waters which he gathered to such members of the public as might apply for them and pay to him the legal charge for the service that he rendered. As the agent of

such a public use, he had no power whatsoever to reserve to himself for his private purposes any part of this water. If he could reserve a part, he could reserve all, and thus, by his *ipse dixit*, convert public use into private ownership, or, if he could reserve a part for himself, he could with equal authority give away parts of the supply to others, and by this method destroy what the constitution itself has declared shall forever remain a public use."

In order to apply the rule laid down in this decision, it is necessary to determine what the status of the use of water was at the time of the reservation. If the water belonging to the Farmers' Ditch Irrigating Company had been dedicated to a public use then the attempt by reservation to devote 200 inches of water to a private use would be abortive. On the other hand, if the water of the Farmers' Ditch Irrigating Company was, at the time of such reservation legally devoted to a private use, then the reservation of 200 inches of such water might be effective, notwithstanding that thereafter the balance of the water became dedicated to a public use.

No evidence was introduced as to the status of this water at the time of said reservation, and it is impossible to determine from the record this very important question. Hence, I see no alternative but to reopen this case for the introduction of evidence to establish the matters above referred to. Therefore, I recommend that the submission of this case be set aside and that the same be set down for further hearing.

I submit the following form of order:

**ORDER.**

For the reasons set out in the foregoing opinion, the submission of the application herein is hereby set aside and a further hearing therein is hereby ordered.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of June, 1913.

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DECISION No. 725.

GEORGE ASKEW AND ROBERT MORRISON

vs.

SOUTHERN PACIFIC COMPANY.

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Case No. 342.

*Decided June 18, 1913.*

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Complainants petition the Commission for an order requiring the Southern Pacific Company to restore and maintain agents at El Dorado and Shingle Springs.

**Complainants contend that residents at these points are greatly inconvenienced in securing cars and are also forced to wait for passenger trains outside of waiting rooms, stations being kept locked.**

**Held, That service of Southern Pacific Company at El Dorado and Shingle Springs is unjust, unreasonable and inadequate, and it is hereby ordered to properly store and care for freight received, and to provide and maintain such facilities as are necessary for the comfort and convenience of passengers.**

*F. Alleyne Orr*, for Complainants.

*George D. Squires*, for Defendants.

#### REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

In this case George Askew and Robert Morrison, residents of El Dorado and Shingle Springs, El Dorado County, petition the Commission for an order requiring the Southern Pacific Company to restore and maintain agents at said stations of El Dorado and Shingle Springs, located on that part of the Southern Pacific Company's line known as the Placerville Branch.

These stations are about six miles distant from each other and at present the nearest agency station is Diamond Springs, two miles east of El Dorado and eight miles east of Shingle Springs and the nearest agency station to the west is Latrobe, eleven miles from Shingle Springs and seventeen miles from El Dorado. The census of 1910 gives El Dorado a population of 310 and Shingle Springs a population of approximately 175 people. Some farming is carried on in the vicinity of these stations and a quantity of wood and hay is shipped therefrom.

It appears that the carrier erected station buildings and for a number of years maintained agencies at both places and that on or about January 16, 1911, it withdrew its agent from El Dorado, and on or about July 12, 1912, it withdrew its agent from Shingle Springs, and thereafter operated same as "prepay stations," and it is alleged that the withdrawal of the agents from said stations was without just cause or warrant and that material and serious inconvenience and detriment has resulted thereby to the residents of these communities.

The defendant contends that the revenue received from traffic to and from El Dorado and Shingle Springs was not and is not now sufficient to justify the maintenance of agents thereat and it generally denies that any material inconvenience or detriment has resulted because of the withdrawal of the agents from these stations.

In support of complainant's allegation that freight delivered to El Dorado and Shingle Springs by the carrier, since the discontinuance of the agencies thereat, is placed on the open platform or in an open or unlocked warehouse, and loss has been sustained because of inadequate protection to the property at such stations, several witnesses testified, but it appears that only in one instance is there any degree of certainty that loss actually resulted from the exposure of the freight



delivered at either of these stations since the withdrawal of the agents, the consignees being unable to say definitely that the loss in other cases occurred after the goods were delivered at the stations and not while in transit or prior thereto. In the instance where there appears to be a reasonable degree of certainty that the freight was actually delivered by the carrier to the station and thereafter was lost, the witness testified that the freight, a case of whiskey, was seen by his children and others inside the station building, which was kept unlocked at the time, and thereafter disappeared.

Since the withdrawal of the agents there has been and is now considerable inconvenience in securing cars in which to load freight shipped out, such as wood and hay, it being necessary at present to order cars from conductors of the freight trains and persons desiring cars are at times required to wait the arrival of such trains, which is uncertain. The freight trains are scheduled to arrive at both stations in the forenoon, but do not usually arrive thereat until the late afternoon, and during the winter months sometimes after dark. It was suggested that the order for empty cars be placed with the section foreman, but he is often away from the station, at work on the line, at the time of the arrival of the freight trains, and it would not therefore be practicable for him to order the empty cars from the conductor of the freight train. Again, some inconvenience is experienced in having bills of lading signed for shipments, it being necessary for the shipper either to wait until the arrival of the freight train to obtain the conductor's signature, as the agent of the company, or place the bills of lading in a box outside the station building, from which it is taken by the conductor upon his arrival at the station and signed and returned to the bill box from which it can be later taken by the shipper. This, of course, involves the possibility that the conductor may not sign the bill of lading and return it to the box, or if it is signed and returned it might be taken therefrom by some one other than the party making the shipment, and the party making the shipment would have no receipt therefor, and it also requires another trip to the station by the shipper or his agent after having left goods there for transportation, and in case the shipper lives at a point some distance from the station this is not always convenient. In some cases, persons living in the interior, and who, prior to the discontinuance of the agent at Shingle Springs, received their freight at that point, now receive their freight at Folsom, at which point there is an agent, rather than take the risk of losing the goods, or part thereof, after they had been unloaded at Shingle Springs and left on the platform or in the unlocked warehouse, and are thereby put to the necessity of hauling the goods for a much longer distance. Passengers awaiting trains at El Dorado and Shingle Springs have been inconvenienced by being required to wait

outside of the station waiting rooms, which are usually kept locked since the discontinuance of agencies at these points, and it was testified by one of the witnesses who lives at Rescue, an interior point about  $4\frac{1}{2}$  miles distant from Shingle Springs, that in order to be present at the hearing of this matter it was necessary to take the train at Shingle Springs and that on arrival there the station waiting room was found to be locked and the witness was required to wait outside of the station in a terrific storm and in the rain and cold for an hour or more. Again, there is a daily week day stage service from Amador County points to El Dorado, and persons traveling via that point are required to wait at that point for train connections and are greatly inconvenienced in inclement weather by being required to wait outside of the station waiting room, which is usually kept locked. Passengers traveling to Shingle Springs have been also inconvenienced by having their baggage carried through and beyond that point to the next agency station, because there was no agent there to receive and care for same, and the passenger had not presented the baggage check to the train baggagemaster upon the arrival of the train at that point, the train baggagemaster not being permitted by the carrier's rules to put baggage off at non-agency stations without securing the check on which the baggage is transported.

The volume of the freight traffic to and from El Dorado and Shingle Springs and the revenue thereon during the years of 1911 and 1912 is set out in the following comparative statement:

| Station                     | Forwarded    |                     | Received   |                      | Total       |                      |
|-----------------------------|--------------|---------------------|------------|----------------------|-------------|----------------------|
|                             | Tons         | Revenue             | Tons       | Revenue              | Tons        | Revenue              |
| El Dorado (1911)-----       | *31<br>†81   | \$236 29<br>206 79  | 190<br>51  | \$1437 98<br>209 57  | 221<br>132  | \$1674 27<br>418 36  |
| Total-----                  | 112          | \$445 08            | 241        | \$1647 55            | 353         | \$2092 63            |
| El Dorado (1912)-----       | *62<br>†290  | \$177 00<br>334 00  | 287<br>145 | \$1270 00<br>287 00  | 349<br>435  | \$1117 00<br>621 00  |
| Total-----                  | 352          | \$511 00            | 432        | \$1557 00            | 784         | \$2068 00            |
| Shingle Springs (1911)----- | *53<br>†520  | \$404 08<br>862 36  | 279<br>433 | \$1847 19<br>1763 04 | 332<br>953  | \$2251 27<br>2625 40 |
| Total-----                  | 573          | \$1266 44           | 712        | \$3610 23            | 1285        | \$4876 67            |
| Shingle Springs (1912)----- | *174<br>†704 | \$287 00<br>1100 00 | 279<br>329 | \$1418 00<br>1213 00 | 453<br>1033 | \$1705 00<br>2318 00 |
| Total-----                  | 878          | \$1387 00           | 608        | \$2636 00            | 1486        | \$4023 00            |

\*Less than carload.

†Carload.

It will be noted that during the year 1912 there was a marked increase in the tonnage forwarded in carload and less than carload quantities from both El Dorado and Shingle Springs, also an increase

in the total revenue therefrom. Although there was no decrease during the year 1912 in the tonnage of less than carload shipments received at Shingle Springs, there was a considerable decrease in the tonnage of carload shipments received thereat and in the total revenue therefrom. The increase in the tonnage of freight received at El Dorado during the year of 1912 was material, both as to less carload and carload freight, although there was a decrease in the total revenue therefrom. The total tonnage of freight forwarded from and received at both stations shows a decided increase during the year 1912, while the total revenue therefrom shows a decrease of approximately \$900.00, or about 7 per cent.

For the reason that this statement does not show the passenger traffic from and to El Dorado and Shingle Springs and the revenue thereon, and being for a period during all of which there was no agent at El Dorado and part of which there was no agent at Shingle Springs, it does not, in my opinion, completely and accurately indicate the total revenue which would be received on traffic to and from those points, if agencies were maintained thereat.

A statement follows showing the freight and passenger traffic to and from El Dorado and Shingle Springs, during a period of one year—six months prior to and six months subsequent to the discontinuance of agencies at those points.

| Station and period   | Originating at<br>El Dorado  |           | Destined to<br>El Dorado     |           | Total                        |           |
|--|------------------------------|-----------|------------------------------|-----------|------------------------------|-----------|
|  | Number<br>of pas-<br>sengers | Revenue   | Number<br>of pas-<br>sengers | Revenue   | Number<br>of pas-<br>sengers | Revenue   |
| <i>El Dorado</i>   |                              |           |                              |           |                              |           |
| July to December, 1910, inclu-<br>sive (prior to closing of<br>agency) -----     | 1237                         | \$1209 50 | 1238                         | \$1136 15 | 2475                         | \$2345 65 |
| January to July, 1911, inclu-<br>sive (subsequent to closing<br>of agency) ----- | 914                          | 830 63    | 860                          | 925 80    | 1774                         | 1756 43   |
| Total for year -----   | 2151                         | \$2040 13 | 2098                         | \$2061 95 | 4249                         | \$4102 08 |
| Station and period   | Freight forwarded            |           | Freight received.            |           | Freight—total                |           |
|  | Tons                         | Revenue   | Tons                         | Revenue   | Tons                         | Revenue   |
| <i>El Dorado</i>   |                              |           |                              |           |                              |           |
| July to December, 1910, inclu-<br>sive (prior to closing of<br>agency) -----     | *34                          | \$123 00  | 304                          | \$1320 00 | 338                          | \$1443 00 |
|  | †289                         | 941 00    | 122                          | 506 00    | 411                          | 1447 00   |
| Total -----  | 323                          | \$1064 00 | 426                          | \$1826 00 | 749                          | \$2890 00 |
| January to July, 1911, inclu-<br>sive (subsequent to closing<br>of agency) ----- | *17                          | \$147 00  | 170                          | \$803 00  | 187                          | \$950 00  |
|  | †31                          | 77 00     | 10                           | 34 00     | 41                           | 111 00    |
| Total -----  | 48                           | \$224 00  | 180                          | \$837 00  | 228                          | \$1061 00 |
| Total for year -----   | 371                          | \$1288 00 | 606                          | \$2663 00 | 977                          | \$3951 00 |

| Station and period  | Originating at Shingle Springs |           | Destined to Shingle Springs |           | Total                |           |
|---|--------------------------------|-----------|-----------------------------|-----------|----------------------|-----------|
|   | Number of passengers           | Revenue   | Number of passengers        | Revenue   | Number of passengers | Revenue   |
| <i>Shingle Springs</i>  |                                |           |                             |           |                      |           |
| January to June, 1912, inclusive (prior to closing of agency) -----       | 930                            | \$838 16  | 858                         | \$706 01  | 1788                 | \$1544 17 |
| July to December, 1912, inclusive (subsequent to closing of agency) ----- | 823                            | 638 17    | 917                         | 807 85    | 1740                 | 1446 02   |
| Total for year -----  | 1753                           | \$1476 33 | 1777                        | \$1513 86 | 3538                 | \$2990 19 |
| Station and period  | Freight forwarded              |           | Freight received.           |           | Freight—total        |           |
|   | Tons                           | Revenue   | Tons                        | Revenue   | Tons                 | Revenue   |
| <i>Shingle Springs</i>  |                                |           |                             |           |                      |           |
| January to June, 1912, inclusive (prior to closing of agency) -----       | *84                            | \$141 00  | 141                         | \$812 00  | 225                  | \$953 00  |
| July to December, 1912, inclusive (subsequent to closing of agency) ----- | †238                           | 312 00    | 127                         | 494 00    | 365                  | 806 00    |
| Total -----   | 1322                           | \$453 00  | 268                         | \$1306 00 | 590                  | \$1759 00 |
| July to December, 1912, inclusive (subsequent to closing of agency) ----- | *90                            | \$146 00  | 138                         | \$606 00  | 228                  | \$752 00  |
| July to December, 1912, inclusive (subsequent to closing of agency) ----- | †466                           | 788 00    | 202                         | 724 00    | 668                  | 1512 00   |
| Total -----   | 556                            | \$934 00  | 340                         | \$1330 00 | 896                  | \$2264 00 |
| Total for year -----  | 878                            | \$1387 00 | 608                         | \$2636 00 | 1486                 | \$4023 00 |

\*Less than carload.

†Carload.

Thus, the total revenue from passenger and freight traffic received and forwarded from El Dorado during the period of one year, ending July 30, 1911, was \$8,053.08. Of the total revenue on traffic having origin or destination at El Dorado, \$2,393.00, or approximately 30 per cent, was from less than carload freight traffic, mostly received, and \$4,102.08, or in excess of 50 per cent, was from passengers traveling to and from El Dorado. During that period, 2,151 passengers originated at El Dorado and 2,098 passengers journeyed thereto. The carload business represented less than 20 per cent of the entire traffic into and out of El Dorado.

Of the total revenue from traffic received at and forwarded from Shingle Springs during the year ending December 31, 1912, which amounted to \$7,013.19, but \$1,705.00 was from less than carload freight, mostly received, and \$2,990.19 from passenger traffic to and from that point. The number of passengers originating at Shingle Springs was 1,753 and the number traveling thereto, 1,777. The revenue on carload traffic was 33 per cent of the entire revenue at Shingle Springs.

It is suggested by the carrier that on carload shipments forwarded the services of an agent are not required and that the revenue from such traffic should not be considered in arriving at the revenue properly

attributable to a station. I do not wholly agree with this contention, for logically followed out it would mean that only at points where there was a large less than earload business, or points which received earload shipments in large quantities, should agencies be maintained and it might justify the discontinuance of many agencies and the burdening of the train crews with clerical work which properly should be performed by agents and their assistants. Again, the rates for transportation are supposed to be adjusted in contemplation of the expense incident to the conduct of agencies at the carrier's stations. On the other hand, it is my opinion that on branch lines over which few trains operate, it is not as essential to maintain agencies as it is at stations on the main lines where trains are frequent and where much of the agent's time is devoted to receiving and transmitting telegraphic instructions relating to the running of the trains. However, eliminating entirely the earload traffic, it appears that 525 tons of less than earload freight, the revenue on which was \$2,393.00, and 4,249 passengers, the receipts from whom were \$4,102.08, were handled at El Dorado during the period from July 1, 1910, to June 30, 1911, and that 453 tons of less than earload freight, the revenue on which was \$1,705.00, and 3,528 passengers, the receipts from whom were \$2,290.90, were handled at Shingle Springs during the year ending December 31, 1912. The expense of maintaining an agent at either of these points would be about \$1,000 annually, as testified by a witness for the defendant.

Carriers should carefully consider the convenience and necessity of the public, as well as their own, before discontinuing long established agency stations, even though the revenue from traffic to and from the particular stations might be considered insufficient to justify the maintenance of agents thereat, for the reason that the public, to a great degree, has a right to rely on the maintenance by the carrier of the service and facilities voluntarily established and long continued by it and upon which the public has come to depend, and this duty should not be lightly set aside.

I do not find that the evidence supports the complainant's contention that the carrier agreed to erect the necessary station buildings at El Dorado and Shingle Springs and maintain agents thereat in consideration of rights of way and station grounds being donated at the time the road was constructed, nor do the records of El Dorado County or the available records of deeds in the possession of the carrier indicate that such an arrangement was entered into. The deeds to this property were destroyed by fire, and the only records of same in the carrier's possession is its right of way maps containing abstracts thereof.

From a consideration of all of the facts, I find that the actual loss

sustained by reason of there being no agents at El Dorado and Shingle Springs, has not been material, but that quite material inconvenience has resulted thereby to persons traveling to and from these points, and to shippers in securing empty cars and in having bills of lading executed for their shipments, and to this extent, the service of the defendant at El Dorado and Shingle Springs is unreasonable, unjust and inadequate, and that as an adequate and reasonable service defendant should properly store and care for the freight handled at these stations free of charge for a reasonable length of time, sufficient to enable the consignees to receive notice of the arrival of the goods and take delivery of the same, and provide and maintain such facilities as are necessary for the comfort and convenience of passengers waiting at these stations to board defendant's trains.

I therefore submit the following form of order:

**ORDER.**

George Askew and Robert Morrison having filed with this Commission a complaint as to the service of the Southern Pacific Company at El Dorado and Shingle Springs, California, and full investigation and hearing of the matters and things involved having been had, and being fully apprised in the premises, the Commission is of the opinion that the service of the Southern Pacific Company at El Dorado and Shingle Springs is unjust, unreasonable and inadequate.

*It is hereby ordered* that the Southern Pacific Company shall properly store and care for the freight received by it at El Dorado and Shingle Springs free of charge for a reasonable length of time, sufficient to enable the consignees of the freight to receive notice of arrival of the goods and take delivery of the same, and take reasonable steps to notify consignees thereof, and shall provide and maintain such facilities as are necessary for the comfort and convenience of passengers waiting at these stations to board its trains, and to this end, among other things, shall provide at each of said stations a caretaker, who shall keep said stations open and otherwise attend to the needs of the public for a period of two hours before and after the actual arrival and departure of trains.

*And it is further ordered* that these arrangements be made effective not later than twenty days from the date of service of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of June, 1913.

## DECISION No. 726.

IN THE MATTER OF THE APPLICATION OF D. C. GILLEN  
AND PACIFIC GAS AND ELECTRIC COMPANY FOR AN  
ORDER AUTHORIZING D. C. GILLEN TO SELL, TRANSFER  
AND GRANT TO PACIFIC GAS AND ELECTRIC COMPANY  
HIS ELECTRICAL PROPERTIES IN THE CITY OF COLFAX  
AND VICINITY.

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Application No. 530.

*Decided June 18, 1913.*

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Application of D. C. Gillen to sell his electrical distributing system to the Pacific Gas and Electric Company.

*Held*, Application granted, the purchase price not to be used for rate fixing purposes.

## REPORT OF THE COMMISSION.

D. C. Gillen having applied to this Commission for permission to sell to the Pacific Gas and Electric Company, for the sum of \$12,000, his electrical distribution system in and about the city of Colfax, California, which property is described in the application in this proceeding as follows:

65 poles;  
15 transformers of 52 kilowatt capacity;  
13,000 feet No. 6 and No. 8 copper wire;  
29,000 feet No. 10 and No. 12 copper wire;  
154 meters as follows, to wit:  
4 25-ampere meters  
6 15-ampere meters  
12 10-ampere meters  
132 5-ampere meters  
and equipment on hand.

And Pacific Gas and Electric Company having joined in this application, and a public hearing having been held thereon,

*It is hereby ordered* that D. C. Gillen be and he is hereby authorized to sell, for the sum of \$12,000, his electric distributing system in and about the city of Colfax, California, consisting of the above enumerated property, and that Pacific Gas and Electric Company be and it hereby is authorized to purchase said property upon the following conditions and not otherwise, to wit:

The price paid in consideration for the property herein authorized to be transferred shall not be taken before this Commission, nor any other public body, as representing for rate fixing or other purposes the value of the property transferred.

By order of the Railroad Commission.

Dated at San Francisco, California, this 18th day of June, 1913.

## DECISION No. 727.

IN THE MATTER OF THE APPLICATION OF THE SAN ANTONIO IRRIGATING COMPANY FOR PERMISSION TO BORROW THE SUM OF THIRTY THOUSAND DOLLARS AND EXECUTE ITS PROMISSORY NOTE OR NOTES TO EVIDENCE THE SAME, AND A TRUST DEED TO SECURE THE SAME, AND ALSO AUTHORIZATION TO IMPROVE ITS WATER SYSTEM.

Application No. 519.

*Decided June 19, 1913.*

Application of the San Antonio Irrigating Company for permission to issue notes aggregating \$30,000. *Held*, application granted.

Ward Chapman, for Applicant.

## REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application by the San Antonio Irrigating Company for an order authorizing said company to issue its promissory note or notes in the total sum of \$30,000 and to mortgage or encumber its property to secure the payment of the same.

Applicant is a corporation which was organized in 1869 under articles of incorporation, which provided that the object of the corporation was to supply water for domestic and irrigation purposes to its stockholders, but in May, 1912, its articles of incorporation were amended to provide that the purposes of the corporation are to deliver water to a farming community on the Heyman tract in the San Antonio Rancho in the county of Los Angeles, State of California.

The representatives of applicant stated at the hearing that while at present only stockholders of the company are being served with water, it is proposed hereafter, if sufficient water is developed, to furnish other than stockholders. Therefore, this application was filed because of the strong probability that applicant would become, when its articles empower it to be, a public utility serving water to others than stockholders, for compensation.

Applicant's authorized capital stock is \$50,000, of which stock there have been issued 9,070 shares, of the par value of \$5.00 each, or a total of \$45,350, water being served by applicant only to the owners of such shares.

Applicant has no income, but pays the expenses of conducting its business of distributing this water by levying assessments on its stockholders.



It is proposed to use the money obtained from the issuance of the promissory notes herein asked to be authorized to construct a cement concrete pipe line needed for the carrying on of applicant's business.

A contract has been entered into between applicant and Fred Gould for the construction of such pipe line, and said contract and the specifications attached thereto, both of which are on file with the application herein, set out in detail the materials to be used in the construction of such pipe line and the price to be paid therefor.

It is proposed to pay the interest and principal of these notes by the assessment of the stockholders.

The plant of applicant consists of water rights, and a system for distributing water controlled thereunder, and while we are not furnished with a physical valuation thereof, it appears that there is sufficient property in the possession of applicant, together with the security hereinafter mentioned, to warrant the issuance of these notes.

This other security, or rather assurance that the principal and interest on these notes will be paid, is that applicant's water system furnishes the only available water for approximately 1,500 acres of land, worth probably from \$750,000 to \$1,000,000. Deprived of the water, this land would be worth only a fraction of its present value. Therefore, the need of the owners of this valuable land to protect their water system will be such as to insure their prompt payment of assessments for the payment of the principal and interest on these notes, in order to avoid a foreclosure upon and loss of the water system.

In addition to the above, applicant expects to derive a considerable revenue from the sale of surplus water. Its estimate of the revenue thus to be derived is at least \$2,500 per month.

It is proposed to issue six promissory notes in the sums of \$5,000 each, payable one in one year, two in two years, and three in two years and nine months after date, with interest at seven per cent per annum, and to issue said notes in pursuance of the terms of a deed of trust conveying all of the property of applicant to Los Angeles Title and Trust Company as security for the payment of said notes.

I recommend that the application be granted, and submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by the San Antonio Irrigating Company for an order authorizing the issue by said company of \$30,000, face value of promissory notes, and for an order to mortgage or encumber its property to secure the payment of the same, and a hearing having been duly held and it appearing to the Commission that the money to be secured by the issue of said notes is necessary and reasonably required by said company for the acquisition, construction, completion, extension

and improvement of its facilities, and that the purposes for which the proceeds of the sale of said notes are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California does hereby authorize the issue by the San Antonio Irrigating Company of six promissory notes of the face value of \$5,000 each, payable one in one year, two in two years and three in two years and nine months from their date, to draw interest at the rate of seven per cent per annum. Said notes to be issued under and in pursuance of the terms of a trust deed to be executed by the San Antonio Irrigating Company to the Los Angeles Title and Trust Company, a copy of which said deed of trust is on file with the application herein, upon the following conditions and not otherwise, to wit:

1. The San Antonio Irrigating Company shall receive full face value for said promissory notes.

2. The proceeds derived from the issuance of said notes shall be used for the following purposes only:

- (a) For the purpose of acquiring property, and the construction of a cement concrete pipe line, the details of the materials to be used and the work to be done, and the price to be paid therefor, being set out in full in a copy of a contract between applicant and Fred Gould, dated the 5th day of March, 1913, and the specifications attached to said contract, both said contract and said specifications being on file with the application herein.

3. Said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds derived from the issuance of said notes hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission in accordance with the Commission's General Order No. 24, stating the sale or disposition of such notes during the preceding month, the terms and conditions of such sale or other disposition, the moneys realized therefrom and the use and application of such moneys.

4. The authority hereby given to issue notes shall apply only to notes issued by said company on or before the 30th day of June, 1914.

5. This order shall not become effective until applicant has paid the minimum fee specified in section 57 of the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of June, 1913.

Decisions Nos. 728, 729, 730 and 731, grade crossings; not printed. See end of volume.

DECISION No. 732.

NOBLE ELECTRIC STEEL COMPANY

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 252.

*Decided June 20, 1913.*

Complainant asks reparation amounting to \$1,472.22 on five carloads structural iron and steel from San Francisco to Pitt, California.

**Held,** As these shipments moved prior to October 10, 1911, complainant not entitled to reparation and the complaint is dismissed.

Consideration of complainant's request that Commission establish a reasonable rate on iron and steel, postponed until such time as a general investigation into class rates in the Sacramento Valley is completed.

*J. O. Bracken*, for Complainant.

*George D. Squires*, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Complainant seeks reparation on charges collected on five carload shipments of structural iron and steel from San Francisco, California, to Pitt, California. These shipments moved between May 16, 1910, and June 21, 1911. Complainant paid the published rate of 61 cents per hundred pounds, and now alleges that this rate is unreasonable, and that 25 cents per hundred pounds would be a reasonable rate, and requests reparation for the difference between these two rates which upon the shipments involved in this proceeding amounts to \$1,472.22.

Complainant bases its right to reparation upon an allegation that the rate under which the shipments moved was excessive and unreasonable. It was held in this Commission's decision in Case No. 283, *Scott, Magner & Miller et al. vs. Western Pacific Railway Company*, that prior to the amendment of the state constitution on October 10, 1911, a shipper had no substantive right to reparation on the ground that the rate collected was excessive and unreasonable. Inasmuch, therefore, as all of the shipments involved in this proceeding moved prior to October 10, 1911, and the charges therefor were collected prior to that date, complainant is not entitled to any reparation and this portion of the complaint will have to be dismissed.

Although the allegations in the complaint are directed primarily to the claim for reparation, complainant has also requested the Commission to establish a reasonable rate to be collected in the future for the

transportation of structural iron and steel between San Francisco, California, and Pitt, California. These commodities move at present under a fifth class rate. A revision of this rate will necessarily involve a revision of each of the rates in the other ten classes on a proper percentage spread. A revision of this rate would also be reflected to points as far north as the Oregon state line. It is obvious, therefore, that in order to determine a reasonable rate between San Francisco and Pitt, the entire scale of class rates in the Sacramento Valley and Siskiyou Mountain districts will have to be adjusted.

The Commission is not prepared at this time to announce what it considers a reasonable rate, as requested in the complaint. As before stated, however, inasmuch as the complaint is directed chiefly toward the request for reparation, I recommend that an order be made in this proceeding at this time deciding the allegations in regard to reparation, and that the decision of the Commission upon the other allegations in the complaint be postponed until the entire scale of class rates in the Sacramento Valley and Siskiyou Mountain districts has been investigated.

I submit herewith the following form of order:

**ORDER.**

This case having come on regularly for hearing and the Commission being duly advised in the premises,

*It is hereby ordered* that the complaint in this proceeding be and the same hereby is dismissed to the extent that the complaint contains a request for reparation, but that in so far as the complaint contains a request that this Commission establish a reasonable rate on structural iron and steel between San Francisco and Pitt, California, the decision is postponed until such time as a general investigation into the entire scale of class rates in the Sacramento Valley and Siskiyou Mountain districts has been completed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of June, 1913.

## DECISION No. 733.

IN THE MATTER OF THE APPLICATION OF WESTERN PACIFIC RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF NEGOTIABLE PROMISSORY NOTES IN THE AGGREGATE AMOUNT OF EIGHTY-ONE THOUSAND TWO HUNDRED FIFTY DOLLARS IN PART PAYMENT OF PURCHASE PRICE OF ONE HUNDRED TANK CARS.

Application No. 602.

*Decided June 20, 1913.*

Application of Western Pacific Railway Company for permission to issue promissory notes in the amount of \$81,250 as part payment on 100 tank cars.

*Held*, Application granted.

Warren Olney, Jr., Alexander D. Baldwin and Allan P. Matthew, for Applicant.

## REPORT OF THE COMMISSION.

ESHLEMAN, *Commissioner*.

The Western Pacific Railway Company has applied to this Commission for permission to issue its promissory notes to the American Car and Foundry Company aggregating \$81,250, said notes to be in form as follows, to wit:

\$----- NEW YORK, NEW YORK, -----, 1913.

On the ----- day of -----, 191--, without grace, for value received, the Western Pacific Railway Company promises to pay to the order of the American Car and Foundry Company ----- dollars at the office of the Assistant Treasurer of the Denver and Rio Grande Railroad Company, 165 Broadway, New York City, New York.

This note is one of a series of fifteen (15) in number, all of even date, aggregating eighty-one thousand two hundred fifty dollars (\$81,250.00), maturing the first thereof on July 15th, 1913, and one thereafter on the 15th day of each consecutive month until September 15th, 1914, and all equally secured by the title to one hundred (100) tank cars lettered "Western Pacific," and numbered from 1081 to 1180, both inclusive, constructed by the American Car and Foundry Company for Western Pacific Railway Company under an agreement of conditional sale dated December 28th, 1912, by the terms whereof the title to all said cars remains vested in the American Car and Foundry Company or its assigns for the benefit of the holders of the notes issued to represent the obligation of Western Pacific Railway Company to payment of said purchase price. The series of notes of which this is one is issued by Western Pacific Railway Company under said agreement of December 28th, 1912, in exchange and substitution for and in lieu

of a like number of notes heretofore by it issued under said agreement and all of which have been, coincident with the issue hereof, surrendered to and canceled by it. The notes of this present series are identical in number, amount and dates of maturity with those so surrendered and canceled; they represent the obligation of Western Pacific Railway Company to pay a part of the purchase price of the cars constructed under said agreement of December 28th, 1912; they are all equally secured by the retained title to said cars and to all of them, which title will not vest in Western Pacific Railway Company, its successors or assigns, until all the terms and conditions of said agreement of December 28th, 1912, obligatory upon it (including the payment in full of the series of notes of which this is one) have been fully complied with, and are in all respects identical as to right, priority, claim, interest and security with and are subject to the same terms and conditions as the notes so as aforesaid surrendered and canceled. By said agreement of December 28th, 1912, there is (among other things) reserved to Western Pacific Railway Company upon the terms and conditions therein stated the right to pay, at one time and prior to the several maturities thereof, each and every of the notes (including the notes of the series of which this is one) representing part of the purchase price of the equipment in said agreement described at any time outstanding.

[SEAL.]

WESTERN PACIFIC RAILWAY COMPANY,

By \_\_\_\_\_, President.

Attest:

\_\_\_\_\_, Assistant Secretary.

Said notes to be dated as of the date of their actual execution and the amounts and dates of maturity thereof to be as follows:

| Amounts.        | Dates.             |
|-----------------|--------------------|
| \$5,150.00----- | July 15, 1913      |
| \$5,175.00----- | August 15, 1913    |
| \$5,200.00----- | September 15, 1913 |
| \$5,225.00----- | October 15, 1913   |
| \$5,250.00----- | November 15, 1913  |
| \$5,275.00----- | December 15, 1913  |
| \$5,300.00----- | January 15, 1914   |
| \$5,325.00----- | February 15, 1914  |
| \$5,350.00----- | March 15, 1914     |
| \$5,375.00----- | April 15, 1914     |
| \$5,400.00----- | May 15, 1914       |
| \$5,425.00----- | June 15, 1914      |
| \$5,450.00----- | July 15, 1914      |
| \$5,475.00----- | August 15, 1914    |
| \$6,875.00----- | September 15, 1914 |

Said notes to be issued in part payment of the purchase price of one hundred (100) tank cars heretofore sold and delivered by said American Car and Foundry Company to said Western Pacific Railway Company and mentioned in said notes and to be secured by the title to said cars remaining in said American Car and Foundry Company until the payment of all of said notes under an agreement of conditional sale,

dated December 28, 1912, and to be issued only upon the surrender by said American Car and Foundry Company to said Western Pacific Railway Company of the notes heretofore issued by said Western Pacific Railway Company to said American Car and Foundry Company in part payment for the purchase price of said cars.

As the purposes for which these notes are to be issued are proper and the agreement appears to be in all respects fair, I see no reason why the application should not be granted.

I submit the following order:

**ORDER.**

Western Pacific Railway Company having applied to this Commission for permission to issue its promissory notes to the American Car and Foundry Company aggregating eighty-one thousand two hundred and fifty (\$81,250) dollars in the form and of the dates as set out in the opinion hereto, in part payment of the purchase price of one hundred (100) tank cars heretofore sold and delivered by said American Car and Foundry Company to said Western Pacific Railway Company, and a hearing having been held and it appearing that the property to be procured and paid for by such issue is reasonably required for the uses of said Western Pacific Railway Company and is not reasonably chargeable in whole or in part to operating expenses or income, and being fully apprised in the premises,

*It is hereby ordered* that Western Pacific Railway Company be authorized to issue its said promissory notes to said American Car and Foundry Company for the aggregate amount of eighty-one thousand two hundred and fifty (\$81,250) dollars, said notes to be dated as of the dates of their actual execution and to be in form and for the amounts and of the dates of maturity hereinbefore set forth, upon the following express conditions and not otherwise:

(1) That said notes be issued in part payment of the purchase price of said tank cars as aforesaid, and that at the time of their issuance the notes heretofore given by Western Pacific Railway Company to the American Car and Foundry Company in part payment for said purchase price, be surrendered to said Western Pacific Railway Company and canceled.

(2) Said Western Pacific Railway Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of said notes, in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of June, 1913.

## DECISION No. 734.

IN THE MATTER OF THE APPLICATION OF THE HOME TELEPHONE AND TELEGRAPH COMPANY FOR A CERTIFICATE DECLARING THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED TO APPLICANT BY THE CITY OF SOUTH PASADENA IN ORDINANCE NO. 382.

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Application No. 610.

*Decided June 20, 1913*

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## REPORT OF THE COMMISSION.

Home Telephone and Telegraph Company having applied to this Commission for a certificate declaring that public convenience and necessity require the exercise of the rights and privileges granted to applicant by the city of South Pasadena in Ordinance No. 382, adopted May 26, 1913, by which ordinance applicant is given the right to construct and maintain a telephone and telegraph system along the public streets of the city of South Pasadena;

And The Pacific Telephone and Telegraph Company, which is the only other utility of like character operating at South Pasadena, having informed the Commission that it did not desire to protest the granting of this application;

And it appearing to the Commission, therefore, that this is not a case in which a public hearing is necessary, and that public convenience would be subserved by the granting of the application,

*It is hereby ordered* that public convenience and necessity require the exercise by the Home Telephone and Telegraph Company of the rights and privileges granted to it by Ordinance No. 382 of the city of South Pasadena, California, adopted May 26, 1913.

By order of the Railroad Commission.

Dated at San Francisco, California, this 20th day of June, 1913.



## DECISION No. 735.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA EDISON COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE, SELL AND DELIVER TO THE AMOUNT OF TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ITS BONDS BEARING INTEREST AT THE RATE OF FIVE PER CENT PER ANNUM, DUE NOVEMBER 1, 1939, WHICH BONDS ARE TO BE ISSUED UNDER AND SECURED BY TRUST INDENTURE DATED NOVEMBER 1, 1909, EXECUTED BY SAID SOUTHERN CALIFORNIA EDISON COMPANY TO HARRIS TRUST AND SAVINGS BANK AND LOS ANGELES TRUST AND SAVINGS BANK, TRUSTEES.

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Application No. 350.

*Decided June 20, 1913.*

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Supplemental order permitting applicant to issue and hypothecate its bonds Nos. 16022 to 16521, heretofore authorized as security for loans which shall not be less than 80 per cent of the par value of said bonds, the loans not to exceed \$400,000.

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REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

Whereas this Commission on January 27, 1913, made its order in the above entitled proceeding, authorizing the sale and issue by applicant of its bonds numbers 15373 to 17872, on the conditions in said order specified; and

Whereas supplemental petition of said company, filed with this Commission on June 20, 1913, alleges that said company has sold and issued bonds numbers 15373 to 16021, inclusive, on the conditions specified in said order, but that by reason of the present financial situation in the United States it is impossible for said company to sell the remaining bonds so authorized at the price specified in said order or at any price satisfactory to said company; and

Whereas said company desires to make loans not to exceed in the aggregate in the total sum of \$400,000 for periods not exceeding six months from the date thereof, the proceeds to be used only for the purposes specified in this Commission's said order, dated January 27, 1913, and to issue and hypothecate bonds numbers 16022 to 16521, inclusive, of the issue heretofore authorized by this Commission, as security for said loans, and amounting in the aggregate to not less than 80 per cent of the par value of the bonds so hypothecated,

*It is hereby ordered* that said Southern California Edison Company be and the same is hereby authorized to issue and hypothecate its said bonds numbers 16022 to 16521, inclusive, as collateral security for

various loans which shall not be less than 80 per cent of the par value of the bonds hypothecated and which shall not exceed in the aggregate the total sum of four hundred thousand (\$400,000) dollars. Said loans shall be for a period not exceeding six (6) months from the date thereof and the proceeds of said loans shall be used only for the purposes specified in this Commission's said order of January 27, 1913. As and when said loans are paid the bonds so hypothecated as collateral security shall be returned to said company's treasury, to be reissued in accordance with and under the provisions of this Commission's said order of January 27, 1913. In all other respects this Commission's said order shall remain in full force and effect.

Dated at San Francisco, California, this 20th day of June, 1913.

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DECISION No. 736.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE, SELL AND DELIVER BONDS TO THE AMOUNT OF FIVE MILLION DOLLARS OF ITS "GENERAL AND REFUNDING MORTGAGE GOLD BONDS."

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Application No. 603.

*Decided June 20, 1913.*

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Application of Pacific Gas and Electric Company to issue bonds of the face value of \$5,000,000, proceeds to be used for additions, betterments and extensions. *Held*, application granted.

*Charles P. Cutten and William B. Bosley*, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

This is an application for authority to issue bonds of the face value of \$5,000,000 of applicant's thirty-year five per cent general and refunding mortgage gold bonds.

Application is made to issue bonds of the face value of \$1,590,000 for additions, betterments and extensions heretofore made, and bonds of the face value of \$3,410,000 for additions, betterments and extensions to be hereafter made.

Heretofore, on the 14th day of September, 1912, this Commission made its order in Application No. 210, authorizing applicant to issue its general and refunding bonds of the face value of \$5,000,000 for the purpose of making the additions, betterments and extensions specified in said order. The last of the proceeds of these bonds was expended in partial payment for construction work during the month of March, 1913. Applicant alleges that during a portion of the month of March

and during the months of April and May, 1913, it has expended for the acquisition of property and for the construction, completion, extension and improvement of its facilities the sum of \$1,767,488.14, all of which expenditures are said to be properly chargeable to capital account. The periods during which this total expenditure occurred are alleged to have been as follows:

|                  |              |
|------------------|--------------|
| March, 1913----- | \$365,564 12 |
| April, 1913----- | 583,916 31   |
| May, 1913-----   | 818,007 71   |

Applicant has filed with this Commission statements showing in detail the expenditure of these sums of money. Under applicant's general and refunding mortgage it may, as between itself and the trustee, receive from the trustee bonds of the face value of 90 per cent of moneys theretofore expended for the acquisition of property and for the construction, completion, extension and improvement of its facilities. Applicant accordingly asks authority under this head to issue bonds of the face value of \$1,590,000.

The remaining bonds of \$3,410,000 face value, represent 90 per cent of expenditures which applicant expects to make for capital account subsequent to May 31, 1913. These expenditures are to be made for new construction work for the general purposes specified in Exhibit "B" of Application No. 552, filed with this Commission May 10, 1913, to which exhibit reference is hereby made. It appears from said exhibit that applicant estimates a total expenditure for new construction work for the year 1913 of \$13,721,683.92 in connection with its various departments, including electrical department, gas department, railway department, water department, steam department and miscellaneous matters. The largest items in this program of construction for the year 1913 are as follows:

|  |                |
|--|----------------|
| South Yuba hydroelectric development, including the Lake   |                |
| Spaulding and Bear River work-----                         | \$3,854,354 08 |
| Installation of three power houses in Placer district----- | 2,267,818 30   |
| Steel tower transmission lines from Drum power house to    |                |
| Cordelia sub-station-----                                  | 1,129,633 99   |

The testimony shows that of the expenditures for the month of May, 1913, between 50 and 75 per cent were made in connection with the South Yuba hydroelectric development and about 5 per cent in connection with the Drum-Cordelia and the Cordelia-San Rafael tower lines.

Applicant has an authorized issue of preferred stock amounting to \$10,000,000 and of common stock amounting to \$150,000,000. Of the stock so authorized the entire preferred stock has been issued. Of the common stock \$31,998,750 is issued and outstanding in the hands of the public, and \$31,696,866.66 is owned by the San Francisco Gas and Electric Company, a subsidiary corporation. As appears from this

Commission's order in Application No. 210, none of the latter stock is to be issued to the public. By agreement between the parties no dividends are to be paid on this stock, except to minority stockholders representing not more than one per cent of the total.

The applicant's bonded indebtedness, both underlying bonds and its general and refunding bonds, amounts to \$75,858,800. In addition to these bonds, this Commission, in Application No. 552, Decision No. 673, authorized the issue of \$5,000,000 face value convertible debenture bonds. Of the bonds so authorized, however, none have at present been sold.

Applicant reports current liabilities as of May 31, 1913, to be \$4,376,305.70 and current assets as \$3,506,118.97.

As against this stock and indebtedness applicant has a property the value of which is not definitely known to this Commission. Applicant alleges that its value is between one hundred million and one hundred and fourteen million dollars. Before applicant applies for the issue of further securities it will present to the Commission an inventory and appraisal of its property, so that the Commission's engineering and auditing departments may make such investigations as to the Commission may seem advisable.

For the year ending December 31, 1912, the applicant reports gross earnings of \$14,473,525.57; net income of \$6,313,090.79; balance after the payment of all interest charges \$2,616,257.83. During the year 1912 applicant authorized the payment of dividends at the rate of 6 per cent on its preferred stock amounting to a total of \$600,000, and dividends of 5 per cent on its common stock amounting to approximately \$1,500,000.

Applicant has entered into no contract for the sale of the bonds which it now asks this Commission to authorize, but believes that it will be able to sell them at 85 or over. Because of the present financial situation applicant asks authority to pledge the bonds of the face value of \$1,590,000, which it desires to issue on account of expenditures heretofore made for capital account, so that if an advantageous sale of the bonds is impossible, the company may use them as collateral to borrow money up to at least 75 per cent of their face value to meet indebtedness which has been incurred in the construction work against which the bonds are to issue.

I find that the purposes for which the proceeds from the sale of the bonds hereby authorized are to be used are not in whole or in part reasonably chargeable to operating expenses, or to income and submit herewith the following form of order:

**ORDER.**

Pacific Gas and Electric Company having applied to the Railroad Commission of the State of California for authority to issue its general

and refunding mortgage gold bonds to the amount of \$5,000,000, face value, said bonds to be payable on the first day of January, 1942, and to bear interest at the rate of 5 per cent per annum, payable semi-annually, and secured by mortgage or deed of trust upon all the property of the company, and a public hearing having been held upon said application, and the Commission finding that the purposes for which the proceeds of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission hereby authorizes the issue by said Pacific Gas and Electric Company of five million (\$5,000,000) dollars, face value, of principal of its general and refunding mortgage gold bonds, maturing on the first day of January, 1942, and to bear interest at the rate of 5 per cent per annum, payable semi-annually, under and in pursuance of the terms of the mortgage or deed of trust heretofore and on the first day of December, 1911, made and executed by said Pacific Gas and Electric Company to Bankers' Trust Company of New York, corporate trustee, and Frank B. Anderson of San Francisco, individual trustee, on the following conditions and not otherwise, to wit:

1. Pacific Gas and Electric Company may sell bonds of the face value of one million five hundred and ninety thousand (\$1,590,000) dollars of said authorization so as to net the said company not less than 85 per cent of the par value of the principal thereof, besides interest accrued thereon, or, as an alternative, shall have the right to pledge said bonds as security for notes of a period of less than twelve (12) months, said indebtedness to be not less than 75 per cent of the face value of the bonds pledged.

(a) The proceeds of the sale or pledge of said bonds shall be applied only for the discharge or refunding of obligations of the company incurred for the acquisition of property, the construction, completion, extension or improvement of facilities, and the maintenance of service during the months of March, April, and May, 1913, in accordance with statements of expenditures for said months attached to and filed with the application herein as exhibits thereto.

2. Pacific Gas and Electric Company may sell bonds of the face value of three million four hundred and ten thousand (\$3,410,000) dollars of the issue hereby authorized, so as to net said company not less than 85 per cent of the par value of the principal thereof besides interest accrued thereon.

(a) The proceeds from the sale of said bonds shall be applied only to discharge or refund obligations of the company which may be incurred subsequent to May 31, 1913, for the acquisition of property, the construction, completion, extension or improvement of facilities and the maintenance of service for items specified in Exhibit "B" attached to

Application No. 552 and filed on May 10, 1913, showing authorized expenditures and additional estimated capital requirements not as yet authorized for the year 1913.

3. Pacific Gas and Electric Company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale or pledge, as the case may be, of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month shall make verified reports to the Commission stating the sale or pledge of said bonds during the previous month, the terms and conditions of such sale or pledge, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

4. The authority hereby given to issue bonds shall apply only to bonds issued by said Pacific Gas and Electric Company on or before the first day of June, 1914.

5. This order shall not become effective until the fee prescribed by section 57 of the Public Utilities Act has been paid.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of June, 1913.

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DECISION No. 737.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AUTHORIZING IT TO RENEW FOR THE TERM OF TWO MONTHS SIX NOTES IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS EACH, DATED FEBRUARY 21, 1913, DUE FOUR MONTHS AFTER DATE.

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Application No. 618.

*Decided June 21, 1913.*

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Applicant permitted to issue six two-month promissory notes for \$25,000 each at 5 per cent per annum for the purpose of taking up six four-month notes of a like amount issued February 21, 1913.

*Charles P. Cutten*, for Applicant.

REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application of Pacific Gas and Electric Company for authority to execute and deliver to the Bank of California six (6)

promissory notes for \$25,000 each, due two (2) months after June 21, 1913, payable four (4) months after date, to the order of itself and endorsed and delivered to the Bank of California.

The proceeds of the notes executed on February 21, 1913, were used for general corporate purposes, including the acquisition of property and the construction, completion, extension, and improvement of its facilities, and not including the payment of dividends. These notes were discounted at 5 per cent per annum for said term of four (4) months. The applicant now proposes to discount its renewal notes at the same rate for the period of two (2) months.

The term of the new notes is to be only two (2) months, and applicant intends ultimately to pay these notes out of the proceeds of bond moneys to which applicant is entitled for moneys heretofore expended.

Under the circumstances of this case, I recommend that the application be granted. I submit herewith the following form of order:

**ORDER.**

Pacific Gas and Electric Company having applied to this Commission for its authority to issue six (6) promissory notes in the amount of twenty-five thousand (\$25,000) dollars each, due two months after June 21, 1913, for the purpose of taking up six (6) promissory notes for twenty-five thousand (\$25,000) dollars each, heretofore executed on February 21, 1913, payable four (4) months after date, and a public hearing having been held on said application,

*It is hereby ordered* that said application be and the same is hereby granted, subject to the following conditions:

1. Said notes may be issued at a discount not to exceed five (5%) per cent per annum, said discount to be in lieu of interest.
2. Pacific Gas and Electric Company shall report to the Commission concerning the issue of said notes and the disposition of the proceeds thereof, in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

This order shall apply only to notes issued by Pacific Gas and Electric Company on or before the 30th day of June, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1913.

## DECISION No. 738.

IN THE MATTER OF THE APPLICATION OF TIDEWATER SOUTHERN RAILWAY COMPANY FOR AN AMENDMENT OF THE ORDER OF THE RAILROAD COMMISSION, DATED JUNE 29, 1912, SO AS TO AUTHORIZE THE PLEDGE OF BONDS TO SECURE LOANS AGGREGATING ONE HUNDRED THOUSAND DOLLARS.

Application No. 38.

*Decided June 21, 1913.*

Supplemental order granting permission to Tidewater Southern Railway Company to pledge bonds, heretofore authorized, of the par value of \$200,000 as collateral security for loans aggregating \$100,000 to be made on its promissory notes.

## REPORT OF THE COMMISSION.

## OPINION ON SUPPLEMENTAL APPLICATION.

THIELEN, *Commissioner*.

This is a supplemental application for authority to pledge applicant's bonds numbered 186 to 385, inclusive, being bonds of the par value of \$200,000, heretofore authorized to be sold by this Commission's order in application No. 38, dated June 29, 1912. Applicant now desires to use said bonds as collateral security for loans up to \$100,000 to be made on its promissory notes.

Applicant, under this Commission's said order dated June 29, 1912, has heretofore sold and issued bonds of the face value of \$200,500 and capital stock of the par value of about \$200,000. Applicant claims that prior to this Commission's said authorization it had spent an additional \$200,000 on its property, and that it owns 1,100 acres of right of way, for which it paid not in excess of \$10,000, but which right of way is worth on an average of \$150 per acre.

Because of the present financial stringency, applicant finds it impossible to sell additional bonds on the terms heretofore authorized by this Commission. Applicant needs about \$120,000 for the completion, including electrification, of its line of railway from Stockton to Modesto. Applicant can secure some \$20,000 from other sources, but will have to borrow about \$100,000 to complete the work. Applicant has made tentative arrangements with three banks in Stockton to secure \$60,000 on its promissory notes, with its bonds as collateral, using \$2.00, par value, of bonds as security for each \$1.00 borrowed. The additional \$40,000 applicant expects to secure from other sources by giving similar security. While the ratio of 2 to 1 requires the use of more bonds than the Commission usually allows in cases of this kind, the facts of this case justify this ratio in the present proceeding. The notes are to bear



interest at the rate of 7 per cent per annum. As the local banks are securing 7 per cent and 8 per cent for their money on loans in the vicinity, and as applicant is dependent on local money, it is impossible for applicant at the present time to secure money on better terms. The notes are to be payable at periods of twelve months or less from the date of issue, and accordingly do not require the consent of this Commission for their initial issue.

Such bonds as may be used as collateral shall be returned to the treasury when the respective obligations are paid and shall not be thereafter again issued until this Commission's consent has first been secured.

I find that in view of the present financial conditions, the application is a reasonable one and recommend that it be granted.

I submit herewith the following form of order:

**ORDER.**

Tidewater Southern Railway Company having applied to this Commission for authority to issue its bonds numbered 186 to 385, inclusive, heretofore authorized to be issued and sold, by this Commission's order in the above entitled proceeding, dated June 29, 1912, such bonds to be used as collateral security for loans on promissory notes amounting to not in excess of one hundred thousand dollars (\$100,000), to bear interest at not to exceed seven per cent (7%) per annum, not to exceed two dollars (\$2.00) par value, of applicant's said bonds to be used as security for each one dollar (\$1.00) borrowed, and a public hearing having been held on said application,

*It is hereby ordered* that said application be and the same is hereby granted, subject to the following conditions:

1. When said bonds are returned to the treasury they shall not again be issued unless this Commission's consent shall first have been secured.
2. The proceeds to be derived from said loans shall be devoted only to the purposes specified in this Commission's said order, dated June 29, 1912.
3. Applicant shall account to the Commission for the receipt and application in detail of the proceeds of said notes and for such bonds as may be issued under this authorization, in accordance with the provisions of this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.
4. In all respects not inconsistent herewith, the Commission's said order dated June 29, 1912, shall remain in full force and effect.
5. This order shall apply only to such bonds as may be issued prior to January 1, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1913.

## DECISION No. 739.

IN THE MATTER OF THE APPLICATION OF OCEAN SHORE RAILROAD COMPANY FOR AUTHORITY TO EXECUTE NOTES AGGREGATING FIFTY-TWO THOUSAND SIX HUNDRED AND TWO DOLLARS AND SIXTY-FOUR CENTS FOR THE PURCHASE OF EQUIPMENT.

Application No. 601.

*Decided June 21, 1913.*

Applicant asks authority of Commission to issue promissory notes in the amount of \$52,602.64 for the purchase of equipment.

Application granted, the property to be acquired by the issuance of these notes not being affected by suit pending against applicant in the Superior Court.

*McCutchen, Olney & Willard and J. M. Mannon, Jr., for Applicant.*

## REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application for authority to issue eight promissory notes for the sum of \$2,873.36 each, totalling the sum of \$22,986.88, being balance of money due on two certain locomotives, and eight promissory notes for the sum of \$3,701.97 each, or a total of \$29,615.76, to pay for forty certain freight cars which have been ordered by applicant.

The contract for the two locomotives was entered into on May 8, 1913, between applicant and The Baldwin Locomotive Works of Philadelphia. The contract provides that the title shall remain in the Baldwin Locomotive Works until the purchase price has been fully paid. The Railroad Company agrees to pay to the seller the sum of \$10,766.66 in cash, on June 8, 1913, and the balance in notes, which notes are to be payable on September 8, 1913, and quarterly thereafter up to and including June 8, 1915. These notes are to be in the sum of \$2,873.36 each, which sum includes interest at the rate of 6 per cent. A copy of the contract is attached to the application and marked "Exhibit A." The locomotives are already in service on applicant's line of railroad between San Francisco and Santa Cruz and are necessary for applicant's business.

The forty freight cars are covered by agreement dated February 26, 1913, between the American Car and Foundry Company and the applicant herein, a copy of which agreement is attached to the application and marked "Exhibit B." This agreement provides, in effect, that the car company is to sell to the railroad company forty freight cars of the types specified in the contract. Thirteen thousand eight hundred and eight dollars and thirty-three cents is to be paid in cash and the remainder of the purchase price is to be represented by eight notes in

the sum of \$3,701.97 each, the first of these notes to be payable three months after the date of average delivery of the cars and the others to be payable at intervals of three months thereafter. The applicant has been obliged to use a large number of foreign line freight cars and paid therefor last year 35 cents per day for each car, and this year 45 cents per day. For the four months of July, August, September and October of last year, applicant paid for the use of foreign line freight cars the sum of \$3,704. It thus appears, that for these four months alone, the amounts paid by applicant for foreign line cars, on a 6 per cent basis, amount to an investment of over \$60,000. The entire price to be paid for the forty cars which it is now proposed to purchase, is \$43,424.09. The evidence shows that applicant can not secure from foreign line companies all the cars needed by it in the prompt conduct of its business. Applicant has deposited in a bank in this city, the cash payment to be made on the cars, and expects delivery of the last of the cars prior to August 20, 1913.

The contracts, both for the locomotives and the freight cars, were let after bids had been received from three manufacturers in each case.

I am satisfied that the equipment which it is desired to purchase is necessary for the conduct of applicant's business, and that the price for which it is to be secured is reasonable.

This Commission, in Application No. 82, being an application of the present applicant to incur a certain bonded indebtedness in the amount of \$700,000, on the 1st day of April, 1913, made its order suspending further proceedings until the Superior Court had rendered its decision in the case pending before it raising the issue of the legality of the authorization of the bonds. If the Commission had made its order granting the application in that case, the railroad company would have been authorized to incur a bonded indebtedness affecting property which the protestants claimed belonged to the predecessor of the Ocean Shore Railroad Company and not to that company itself. That proceeding must be distinguished from the present proceeding, for the reason that in the present proceeding there is no doubt that the property, when acquired, will belong to the present applicant and will be paid for by it, and that the protestants in Case No. 82 will not have an interest therein. This Commission is anxious to do what it can to help the Ocean Shore Railroad Company get on its feet, and for that reason is glad that it is not necessary to defer action in the present proceeding.

While some of the notes which are to be issued run for a period of one year or less, so that this Commission's consent to their issuance is not necessary, under the provisions of section 52 of the Public Utilities Act, the Commission's authorization will cover all the notes, so as to avoid confusion.

I find that the purposes for which the proceeds of the notes are to

be used are not in whole or in part reasonably chargeable to operating expenses or to income and recommend that the application be granted.

I submit herewith the following form of order:

**ORDER.**

Ocean Shore Railroad Company having applied to the Railroad Commission for authority to issue its promissory notes, as will hereinafter appear in greater detail, for the purchase of certain equipment, and a public hearing having been held upon said application, and the Commission finding that the purposes for which the proceeds of said notes are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered*, that Ocean Shore Railroad Company be and the same is hereby authorized to issue its promissory notes in the amounts and for the purposes and on the conditions as follows, to wit:

1. Ocean Shore Railroad Company is hereby authorized to issue eight (8) certain promissory notes for the sum of two thousand eight hundred seventy-three and 36/100 (\$2,873.36) dollars each, including interest at the rate of six (6%) per cent per annum, the first note to mature on September 8, 1913, and the remaining notes to mature on the eighth day of each third month thereafter, said notes to be payable to the order of the Baldwin Locomotive Works, in payment of two (2) certain locomotives, all in accordance with agreement dated May 8, 1913, by and between the Baldwin Locomotive Works and Ocean Shore Railroad Company, which agreement is attached to the application in this proceeding and marked "Exhibit A."

2. Ocean Shore Railroad Company is hereby authorized to issue eight (8) certain promissory notes in the sum of three thousand seven hundred one and 97/100 (\$3,701.97) dollars each, including interest at the rate of six (6%) per cent per annum, the first of said notes to be payable three (3) months after the date of the average delivery of the freight cars hereinafter referred to, and the remaining notes maturing at intervals of three (3) months thereafter, the proceeds from said notes to be used only for the acquisition of forty (40) certain freight cars, all as specified in agreement dated February 26, 1913, between the American Car and Foundry Company and Ocean Shore Railroad Company, which agreement is attached to the application in this proceeding and marked "Exhibit B."

3. Ocean Shore Railroad Company shall, on the twenty-fifth day of each month, report to the Railroad Commission with reference to the disposition of the notes hereby authorized, in accordance with the provisions of this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. This order shall not become effective until applicant has paid the minimum fee specified in section 57 of the Public Utilities Act.

5. The authority hereby given to issue notes shall apply only to notes issued by said company on or before the 1st day of January, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1913.

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DECISION No. 740.

IN THE MATTER OF THE APPLICATION OF SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY FOR AUTHORITY TO ISSUE FIRST MORTGAGE BONDS UNDER ITS MORTGAGE AND DEED OF TRUST DATED JULY 1, 1911, IN THE AMOUNT OF ONE MILLION ONE HUNDRED AND NINETEEN THOUSAND DOLLARS, FACE VALUE.

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Application No. 582.

*Decided June 21, 1913.*

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Application of San Pedro, Los Angeles and Salt Lake Railroad Company to issue bonds of the face value of \$1,119,000, to be sold at 90, proceeds to be applied to the repayment of expenditures for property.

*Held.* Application granted. Recommended, that if the valuation of this road, when determined by the Commission, does not bear a proper relation to the bonded indebtedness of the company, applicant shall be required to invest surplus earnings to an amount warranting authorization.

*A. S. Halsted*, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This is an application of the San Pedro, Los Angeles and Salt Lake Railroad Company for permission to issue bonds in the sum of \$1,119,000, to be sold at 90.

The application came on regularly for hearing in Los Angeles, California, Thursday, July 19, 1913, and after a careful consideration of the testimony offered by applicant and of the report made by Mr. White of our auditing department, and the analysis by Mr. Sinsheimer, our stock and bond expert, I recommend that the application be granted. As this recommendation is based upon facts different from those which usually form the basis of permission for a bond issue, I set out at some length my reason for approving this application.

The Railroad Commission of the State of California is at present engaged in ascertaining the physical value of applicant, the San Pedro, Los Angeles and Salt Lake Railroad Company, but has not yet completed such valuation, nor is the work of ascertaining the value near enough to completion to properly estimate the relation existing between the value of the property and the bonded indebtedness thereof. The proceeds of the bonds asked for are to be applied to the repayment of sums expended for the property, such sums having been expended for such purposes as may be properly capitalized, and not from income.

It not being possible, as I have stated, to ascertain at this time the relation between the value of the property and its bonded indebtedness, I have based my approval of this application upon the following facts:

The property is in a very healthy condition. While it is heavily bonded, the amounts being, previous to this issue, \$55,155,000, for the year ending April 30, 1913, the road will have paid its bond interest on the \$55,155,000, its operating expenses, including taxes, and will have a surplus of \$252,000. I believe that a property in that condition can safely issue additional bonds in the sum asked for for the purposes mentioned. While the bonds will be sold at 90, applicant will make up the 10 per cent from earnings and pay its obligation of \$1,119,000 in full.

While I am recommending that the Commission approve of this application, I further recommend that when the value of the property shall have been ascertained, if the relation between the value of the property and its bonded indebtedness is not such as would have warranted the Commission in approving of this application, applicant be required to invest its surplus earnings in additions and betterments until it shall have brought about such relationship between the value of its property and its bonded indebtedness as would have warranted, in the first place, an authorization of the bonds herein requested to be issued.

I recommend this action on the particular facts presented in this case.

Applicant proposes to issue \$1,119,000 of its first mortgage 4 per cent fifty-year bonds under its mortgage and deed of trust to Guaranty Trust Company of New York, dated July 1, 1911, a copy of which was filed with the application herein and marked Exhibit "A." It is proposed to use the proceeds from the sale of these bonds for the purposes of reimbursing the applicant's treasury for expenditures for equipment and for additions and betterments.

The applicant submits, in connection with its application, a list in detail of the items of expenditure embraced within the sum of \$1,119,000, which has been marked as Exhibit "F." This list covers

expenditures from January 1, 1912, to March 31, 1913, which applicant has summarized as follows:

|  |                |
|--|----------------|
| Expenditure for construction of branch lines, detail shown on statement F-1 -----  | \$73,034 97    |
| Expenditure for construction and improvement of trestles and bridges and for reduction of grades, detail shown on statement F-2-----   | 161,660 85     |
| Expenditure for betterment of real estate and wharf and dock property, per detail on statement F-3-----  | 42,808 53      |
| Expenditure for construction or acquisition, improvement and enlargement of terminals, stations, shops, shop machinery and tools, depots, wharves, warehouses and other structures or of other terminal and station facilities, the construction or acquisition or extension of spur tracks, side tracks, passing tracks and yard tracks; detail shown on statement F-4----- | 139,546 58     |
| Expenditure for purchase or other acquisition of or improvement and enlargement of water tanks, pipe lines, etc., per detail on statement F-5 -----  | 6,579 99       |
| Expenditure for purchase or other acquisition of additional engines, passenger cars, freight cars and other rolling stock per detail on statement F-6 -----  | 503,384 23     |
| Expenditure for construction or acquisition of any other additions to and improvements and betterments of and upon any of the lines of railroad of this company, per detail on statement F-7---  | 192,585 41     |
| Total -----  | \$1,119,600 56 |

For the full details of this list, reference is hereby made to Exhibit "F," filed in connection with the application herein.

The applicant has been unfortunate in past years on account of serious washouts necessitating large expenditures in the matter of change of grade, etc., which expenses were charged to operating expense, with the result that a deficit of \$4,034,748.69 existed at June 30, 1912.

This deficit will be materially decreased in the year ending June 30, 1913, by reason of a large increase in operating revenues and a decrease in its operating expense. After paying all fixed charges, including taxes, the books of the company show a surplus as of April 30, 1913, the date of its last balance sheet, of \$251,180.47. These bonds are to be placed at 90 per cent of their face value, realizing \$1,007,100 cash; the difference, being discount on the bonds amounting to \$111,900, will be paid out of income of the applicant.

The books and accounts of applicant show that all expenditures properly chargeable to additions and betterments are handled in accordance with the classification and rulings prescribed by the Interstate Commerce Commission and the Railroad Commission of the State of California. The investigation made by this Commission develops the fact that no part of the expenditures for which the applicant now requests an issue of bonds, was chargeable to operating expenses or income.

I recommend that the application be granted and submit the following form of order:

## ORDER.

San Pedro, Los Angeles and Salt Lake Railroad Company having made application to the Railroad Commission of the State of California for authority to issue \$1,119,000 of its first mortgage 4 per cent fifty-year bonds under its mortgage and deed of trust to Guaranty Trust Company of New York, dated July 1, 1911, copy of which is on file with this Commission in connection with the application herein and marked Exhibit "A," to which reference is hereby made; and a hearing having been held and it appearing that the purposes for which the applicant herein desires to issue said bonds are not, in whole or in part, chargeable to operating expenses or to income,

*It is hereby ordered* that the San Pedro, Los Angeles and Salt Lake Railroad Company be authorized, and it is hereby authorized, to issue \$1,119,000 of its first mortgage 4 per cent fifty-year bonds under said mortgage and deed of trust to Guaranty Trust Company of New York; said bonds to be issued on the following conditions and not otherwise:

(1) Said bonds shall be sold so as to net applicant herein not less than 90 per cent of their face value.

(2) The proceeds from the sale of said bonds shall be used for the purpose of reimbursing applicant's treasury for expenditures heretofore made in the sum of \$1,119,000, as per applicant's list filed with this Commission and marked Exhibit "F," in connection with the application herein.

(3) The authorization hereby given shall apply to such bonds as may be issued on or before June 30, 1914.

(4) San Pedro, Los Angeles and Salt Lake Railroad Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month shall make verified reports to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of such sale or sales, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(5) This order shall become effective only after the payment of the fee prescribed by the Public Utilities Act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 21st day of June, 1913.



## DECISION No. 741.

IN THE MATTER OF THE APPLICATION OF CONSERVATIVE  
REALTY COMPANY FOR AN ORDER FIXING ITS RATES  
FOR WATER SERVICE IN THE COUNTY OF LOS  
ANGELES.

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Application No. 494.

*Decided June 25, 1913.*

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Application for rehearing granted.

*Jones & Bennett*, for Applicant.

*F. B. Amend*, for Protestants.

## REPORT OF THE COMMISSION.

*ESHLEMAN, Commissioner.*

The applicant demands a rehearing in the above entitled matter on several grounds set out in its petition. Its main contention is that this Commission does not find specifically on certain questions of fact upon which a decision should be based. It is my view that such a finding is not necessary, and I find no merit in such contention. One point, however, is raised concerning which I believe additional evidence should be introduced. The Commission held that inasmuch as this company has accorded a certain rate voluntarily to its consumers in contracts, that this rate could be held, as against this company, to be reasonable as an admission, and that because of the fact that these consumers had been voluntarily accorded these contracts and no strong consideration of public policy appearing, the company should be required to carry them out. It is now argued that these contracts are ambiguous and that the Commission has misconstrued them, and that on further hearing the applicant can present facts which will lead the Commission to conclude that these contracts should not have the weight which has been given to them. I do not believe that any party before this Commission should be foreclosed without the fullest possible hearing on any matter which will affect its rights, and inasmuch as the company has agreed to impound the difference between the rate fixed by the Commission and the rate theretofore charged by the company pending a final decision, I see no reason why a rehearing should not be granted upon this point, evidence being limited to the question upon which a rehearing is granted.

I submit the following order:

**ORDER.**

Application having been made for a rehearing on the part of the applicant herein, and a hearing having been held on such application, and being fully apprised in the premises,

*It is hereby ordered that a rehearing be and the same is hereby granted on the matters and for the reasons set out in the opinion hereto.*

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1913.

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DECISION No. 742.

G. M. SIMPSON, DOING BUSINESS AS THE G. M. SIMPSON LUMBER COMPANY; PATTEN & DAVIES LUMBER COMPANY; OLSON LUMBER COMPANY, AND SOUTH PASADENA LUMBER COMPANY,

*vs.*

SOUTHERN PACIFIC COMPANY; SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 363.

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SAN GABRIEL VALLEY LUMBER COMPANY

*vs.*

SOUTHERN PACIFIC COMPANY AND PACIFIC ELECTRIC RAILWAY COMPANY.

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Case No. 375.

*Decided June 25, 1913.*

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**Complaint of various lumber companies alleging discrimination in lumber rates between San Pedro and Alhambra, San Gabriel and South Pasadena on lines of Southern Pacific Company, Pacific Electric Railway and Salt Lake Railroad Company.**

**Held,** That Southern Pacific Company and Pacific Electric Railway establish a rate on lumber of 6 cents per 100 pounds between these points. That complaint against Salt Lake Railroad Company be dismissed, this road not operating between points named.

*Frank Karr*, for Pacific Electric Railway Company.

*Richard J. Culver*, for Complainants.

*George D. Squires*, for Southern Pacific Company.

*A. S. Halsted*, for San Pedro, Los Angeles and Salt Lake Railroad Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

These cases involve similar matters and were combined and heard together.

In Case 363 the complainants contend that the present rate of 7 cents per 100 pounds on lumber, in carload lots, from San Pedro to Alhambra and South Pasadena, via the line of the Southern Pacific Company, is discriminatory for the reason that it does not bear the same relation to the present rate on lumber, in carload lots, from San Pedro to Los Angeles via the Southern Pacific Company as was maintained prior to February 8, 1912, on which date the rate from San Pedro to Los Angeles on lumber, in carload lots, was reduced from 6 cents per 100 pounds to 4 cents per 100 pounds in compliance with the order of this Commission in Case No. 115, known as the San Pedro Rate Case. The San Pedro, Los Angeles and Salt Lake Railroad Company was erroneously included as a defendant in this matter, as that line does not operate from San Pedro and does not publish rates therefrom on lumber to either Alhambra or South Pasadena. Therefore, this part of the complaint will be disregarded. The San Pedro, Los Angeles and Salt Lake Railroad Company does publish rates from East San Pedro to Alhambra jointly in connection with other lines and locally over its own line to South Pasadena, and the conclusions arrived at herein may properly be applied by the San Pedro, Los Angeles and Salt Lake Railroad Company to those rates.

The same discrimination is charged in the complaint in Case 375, with regard to the rate of 7 cents per 100 pounds on lumber, in carload lots, from San Pedro to San Gabriel by the lines of the Southern Pacific Company and Pacific Electric Railway Company.

In their answers to these complaints the Pacific Electric Railway Company and the Southern Pacific Company question the jurisdiction of this Commission, averring that the rates complained of are interstate rates, and that therefore this Commission has no jurisdiction to consider or readjust them, or to prescribe any rates covering shipments as described in the complaints. However, this point was not urged by the defendants at the hearing, and in view of the admission of one of the defendants as to the reasonableness of the rates complained of and the conclusion of the Commission herein, I do not think it necessary that this question should be given further consideration at this time.

The contention of the complainants is based solely upon the fact that prior to the reduction in the rates from San Pedro to Los Angeles, the lumber merchants of Los Angeles could not reach the territory tributary to Alhambra, San Gabriel and South Pasadena and compete with the lumber dealers located at those points, but that subsequent to the reduction of the rate from San Pedro to Los Angeles, a corresponding reduction not having been made from San Pedro to Alhambra, San Gabriel and South Pasadena, the Los Angeles lumber dealers were thereby enabled to actively compete for business which was regarded as

naturally belonging to the lumber dealers located in Alhambra, San Gabriel and South Pasadena.

The principal witness for the defendant admitted that in view of the rate of 4 cents per 100 pounds on lumber, carloads, in effect from San Pedro to Los Angeles, that the present rate of 7 cents per 100 pounds on lumber, in carload lots, from San Pedro to Alhambra, San Gabriel and South Pasadena is somewhat excessive and stated that the Southern Pacific Company was willing to publish a rate of 6 cents per 100 pounds on lumber, carloads, from San Pedro to Alhambra, San Gabriel and South Pasadena. I believe this to be a reasonable and fair concession on the part of the carrier and that in view of the fact that it was not satisfactorily established by the testimony that the Los Angeles lumber dealers were actually and actively taking away the business of the lumber dealers at Alhambra, San Gabriel and South Pasadena because of the present rate on lumber from San Pedro to Los Angeles, that the rate of 6 cents per 100 pounds on lumber, in carloads, from San Pedro to Alhambra, San Gabriel and South Pasadena should be satisfactory to the dealers themselves.

After careful consideration of all of the circumstances, including the difference in distance, the difference in the volume of business to Los Angeles and the other points involved as affecting the cost of performing the service, I am of the opinion and find as a fact that a rate of 6 cents per hundred pounds is a just and reasonable rate for the Southern Pacific Company to charge on lumber, in carloads, from San Pedro to Alhambra and South Pasadena.

I do not find that the circumstances and conditions on the Pacific Electric Railway between San Pedro and San Gabriel are sufficiently dissimilar and unlike to justify a higher rate than was admitted to be reasonable by the principal witness for the defendant Southern Pacific Company, and I therefore find as a fact that a rate of 6 cents per 100 pounds on lumber, in carloads, is a just and reasonable rate for the Pacific Electric Railway Company and the Southern Pacific Company to charge on lumber, carloads, from San Pedro to San Gabriel, California.

I therefore submit the following form of order:

**ORDER.**

Complaints having been filed as to the discrimination in the rates on lumber, in carloads, from San Pedro to Alhambra, San Gabriel and South Pasadena, and a full investigation of the matters and things involved having been had and the matter having been duly heard, and the Commission being of the opinion that a rate of 6 cents per 100 pounds is a just and reasonable rate for the transportation of lumber, in carload lots, from San Pedro to Alhambra, San Gabriel and South Pasadena,

*It is hereby ordered* that the Southern Pacific Company publish and file and put into effect a rate of 6 cents per 100 pounds as a just and reasonable rate for the transportation of lumber, carloads, from San Pedro to Alhambra, San Gabriel and South Pasadena, California, and that the Pacific Electric Railway Company publish and file and put into effect a rate of 6 cents per 100 pounds as a just and reasonable rate for the transportation of lumber, carloads, from San Pedro to San Gabriel, California;

*And it is further ordered* that the complaint herein against the San Pedro, Los Angeles and Salt Lake Railroad Company be and it is hereby dismissed;

*And it is further ordered* that the Pacific Electric Railway Company and Southern Pacific Company publish and file in a tariff with this Commission the rates found herein to be just and reasonable, to become effective August 1, 1913.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of June, 1913.

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Decisions Nos. 743, 744, 745 and 746, grade crossings; not printed. See end of volume.

DECISION No. 747.

FRED L. HILMER COMPANY

*vs.*

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
AND SOUTHERN PACIFIC COMPANY.

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Case No. 398.

*Decided June 26, 1913.*

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Complaint of Fred L. Hilmer Company alleges that refrigeration charges of the Santa Fe and Southern Pacific companies, between San Francisco and Los Angeles, are excessive. *Held*, complaint dismissed.

*Wm. R. Wheeler*, for Complainant.

*E. W. Camp* and *U. T. Clotfelter*, for Atchison, Topeka and Santa Fe Railway Company.

*C. W. Durbrow* and *Geo. D. Squires*, for Southern Pacific Company.

REPORT OF THE COMMISSION.

*ESHLEMAN*, Commissioner.

The complainant sets out the fact that the refrigeration charge on a carload of eggs from San Francisco to Los Angeles charged by the

defendant carriers is \$35 per car, and that the charge for refrigeration charged by the carriers from the Missouri River to coast points is only \$25; and alleges that there is a discrimination against the local shipper in California and that the rate of \$35 for refrigeration is exorbitant. It is further urged that two tons of ice are sufficient for the refrigeration of a carload of eggs moving from San Francisco to Los Angeles, and that the shipper should be permitted to furnish this ice at his own expense and should have an option as to the amount of ice to be used for refrigeration. The defendants deny that the circumstances affecting the movement from Missouri River points to the coast are at all similar to those surrounding the movement from San Francisco to Los Angeles, and I think the evidence amply justifies this position. It appears that the \$25 rate from Missouri River points to the coast points only covers the cost of re-icing en route; that the cars are delivered to the carriers by private car lines thoroughly precooled and initially iced, while in the movement between San Francisco and Los Angeles the carriers perform the entire service for the \$35 charge, both initial icing and icing en route. Evidence was introduced showing that the actual cost of ice for certain cars of eggs shipped by way of the Southern Pacific in the cars of the Pacific Fruit Express was in the neighborhood of \$25, while the Atchison, Topeka and Santa Fe shows an average cost of over \$30 for ice alone.

While I would not hold that from the evidence in this case the refrigeration rates between San Francisco and Los Angeles are reasonable, yet I do not believe the evidence justifies us in granting the prayer of the complaint.

It is urged, however, that regardless of the propriety of the charge of \$35 for the service as now performed, that the service could be performed by the carrier without the use of as great a quantity of ice. The complainant only ships fresh eggs, and it is contended that only a small quantity of ice is necessary properly to preserve a carload of fresh eggs transported from San Francisco to Los Angeles, while it is admitted that more refrigeration is necessary for cold-storage eggs. This contention is entirely without the issues raised by the pleadings, and if passed upon at all by this Commission should be passed upon when properly presented. If as a matter of fact, the carriers are performing this service in an extravagant manner and are using more ice than is necessary, and it is proper to have a different rate apply upon fresh eggs than upon cold-storage eggs, this matter should be presented to the Commission and evidence taken responsive to such issue.

Under all of the circumstances of this case, I believe the complaint should be dismissed.

I submit the following order:

**ORDER.**

Fred L. Hilmer Company having filed its complaint against the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company, and a hearing having been held, and being fully apprised in the premises,

*It is hereby ordered* that the said complaint be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1913.

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DECISION No. 748.

IN THE MATTER OF THE APPLICATION OF ORO ELECTRIC CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

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Application No. 347.

*Decided June 26, 1913.*

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Application of Sierra and San Francisco Power Company petitioning Commission to modify order permitting Oro Electric Company to enter certain portions of San Joaquin County. *Held*, petition denied.

*Chickering & Gregory*, for petitioner, Sierra and San Francisco Power Company.

**REPORT OF THE COMMISSION.**

**ORDER ON PETITION OF SIERRA AND SAN FRANCISCO POWER COMPANY.**

Sierra and San Francisco Power Company having heretofore, on June 20, 1913, filed its petition in the above entitled proceeding asking permission to present evidence in the matter of its service in designated portions of San Joaquin County, and asking that the orders heretofore made by this Commission in Applications No. 64 and No. 347 be so modified that the Oro Electric Corporation will be refused permission to enter that portion of San Joaquin County which lies east of the San Joaquin River and south of a line running northeast and southwest through the towns of Castoria and Peters; and

It appearing that at the time this Commission rendered its decision in Application No. 64 on July 3, 1912, and its decision on rehearing in said proceeding on October 8, 1912, the Sierra and San Francisco Power Company was not actually serving any portion of San Joaquin County north of the right of way of the Atchison, Topeka and Santa Fe Railway Company, other than a portion of the town of Escalon, and that

consequently it was not at said time in such a position that it might appear as a protestant to the application of the Oro Electric Corporation; and

It appearing further that said company is not serving any territory in San Joaquin County south of the right of way of the Atchison, Topeka and Santa Fe Railway Company, into which territory said Oro Electric Corporation has been authorized to enter, so that the only territory which was being served by said Sierra and San Francisco Power Company at the time this Commission made its orders in said Applications No. 64 and No. 347, respectively, was a small portion of the town of Escalon; and

It appearing further, that said Sierra and San Francisco Power Company has had full notice of the proceedings pending before this Commission in said Applications No. 64 and No. 347, and that a representative of said company was present during a portion of the hearings on said Application No. 347, and that, nevertheless, said Sierra and San Francisco Power Company has taken no formal action until long subsequent to this Commission's decisions in said Applications No. 64 and No. 347, and that there is no merit in its said petition,

*It is hereby ordered* that said petition be and the same is hereby denied.

Dated at San Francisco, California, this 26th day of June, 1913.

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DECISION No. 749.

IN THE MATTER OF THE APPLICATION OF THE GRAHAM FARM LANDS COMPANY TO LEASE, AND LOUIS EVANS TO TAKE BY LEASE THE TELEPHONE LINES, EQUIPMENT AND TELEPHONE BUSINESS OF THE GRAHAM FARM LANDS COMPANY.

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Application No. 458.

*Decided June 26, 1913.*

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Application of Graham Farm Lands Company to lease its telephone plant, in the towns of Graham and Tranquillity and adjacent territory, to Louis Evans granted.

*Luther P. Spaulding*, for the Graham Farm Lands Company.

*Louis Evans*, in propria persona.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

At a hearing held in the town of Tranquillity on April 15, 1913, in the matter of the application of The Pacific Telephone and Telegraph

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Company to withdraw and of Louis Evans to construct, operate and maintain a telephone system in the towns of Graham and Tranquillity and adjacent territory, it was developed that the telephone system in question is owned by the Graham Farm Lands Company, and is operated under lease to Louis Evans. It was also developed that Louis Evans had no standing before the Commission in the matter of that application, since the lease itself had not been approved by the Commission, and any action taken upon the application would be made contingent upon the approval of the lease.

The Graham Farm Lands Company, through its attorney, and Louis Evans, were directed to apply for the approval of the lease, and the application has been filed.

The hearing developing that the lease is for a term of five years, commencing January 1, 1913, and under its terms Louis Evans agrees to pay to the Graham Farm Lands Company as rental for the use of the telephone system, an amount or sum equal to the net income derived from its operation. It also provides that the lessee is to be permitted to insure and keep the system in repair out of the proceeds of the business, and that the lessor will assume the cost of any construction or additions to, or extensions of, the plant which the business may demand. It further provides that at the expiration of the lease the entire property, inclusive of any and all extensions and additions to the system, shall revert to the lessor.

It is to be noted that the lessee is to pay a rental for the use of the telephone system equal to the net income derived from its operation, but it is also to be noted that the hearing developed that the lessee is also the agent of the lessor in the development and operation of its land business, and that the operation of the former is an important factor in the development and operation of the latter.

No reasonable objection to the lease appearing, the following order is recommended:

**ORDER.**

Application having been made by the Graham Farm Lands Company to lease, and by Louis Evans, to take by lease, the telephone lines, equipment and telephone business of the Graham Farm Lands Company in the towns of Graham and Tranquillity and adjacent territory, all in Fresno County, California, for a term of five (5) years commencing January 1, 1913, and ending December 31, 1917, and a copy of said lease having been filed with this Commission,

*It is hereby ordered* that the application of the Graham Farm Lands Company, and of Louis Evans, the one to lease and the other to take by lease, the telephone lines, equipment and telephone business of the

Graham Farm Lands Company in the territory defined in that certain lease filed with this application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1913.

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DECISION No. 750.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC  
TELEPHONE AND TELEGRAPH COMPANY TO WITH-  
DRAW FROM CERTAIN TERRITORY AND LOUIS EVANS  
TO CONSTRUCT, OPERATE AND MAINTAIN A TELE-  
PHONE SYSTEM IN THE SAID SAME TERRITORY.

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Application No. 448.

*Decided June 26, 1913.*

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**Application of Pacific Telephone and Telegraph Company to withdraw and of Louis Evans to operate a telephone system at Graham and Tranquillity and adjacent territory granted.**

*H. A. Johnson*, for The Pacific Telephone and Telegraph Company.  
*Luther P. Spaulding*, for Louis Evans and the Graham Farm Lands Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is an application involving the withdrawal of one company operating a public utility from a field in favor of a new company desiring to enter that field, and to operate a public utility under lease from a third party.

In its original form this application was an application by The Pacific Telephone and Telegraph Company and Louis Evans for permission to enter into a connecting agreement for the interchange of telephone and telegraph business. The application in this form was not considered a proper matter for the formal consideration of this Commission, since the Commission has taken the position that it is not passing upon general contracts of this nature. An amended application was substituted in lieu of the original application, and the hearing was held on the amended application, as it appears in this opinion and order.

It was developed at the hearing that Louis Evans is operating an exchange at Graham and serving the territory in and adjacent to Graham and Tranquillity under lease from the Graham Farm Lands

Company, and is without standing before the Commission in the matter of this application, in that the lease was executed without the authorization of the Commission, and is in itself illegal. It was, therefore, stipulated that the Graham Farm Lands Company and Louis Evans would apply to the Commission for approval of the lease. This application has been filed and the lease has been approved.

Aside from the condition thus developed and from certain minor considerations affecting rates, and calling for modification and correction, the hearing developed no objectionable conditions.

Louis Evans has built a line from the exchange at Graham to Jameson for connection with the toll system of The Pacific Telephone and Telegraph Company, and desires to exact a toll charge to and from points outside of his territory for the use of his line. The application contemplated a rate of 10 cents for a one-minute conversation and 5 cents for each additional minute. By stipulation the initial period was made two minutes (instead of one) for 10 cents and 5 cents for each additional minute. There appears to be no reasonable ground for objection to this charge.

The schedule of rates for exchange service provided for in the application, and as subsequently modified by a supplemental schedule designed to provide rates for any possible demand for service in the rural or suburban districts not provided for in the original schedule, is as follows:

*Exchange radius* one half ( $\frac{1}{2}$ ) mile from the central exchange or switchboard in the town of Graham.

*Monthly rates within exchange radius:*

| BUSINESS.             |        | RESIDENCE.             |        |
|-----------------------|--------|------------------------|--------|
| 1 party wall set..... | \$2 50 | 1 party wall set.....  | \$2 00 |
| 2 party wall set..... | 2 00   | 2 party wall set.....  | 1 75   |
| 4 party wall set..... | 1 75   | 4 party wall set.....  | 1 50   |
|                       |        | 10 party wall set..... | 1 00   |

Desk or portable sets, 25 cents per month additional.

*Mileage charges* beyond exchange radius:

For each quarter mile or fraction in addition to above rates

|               |                    |
|---------------|--------------------|
| 1 party ..... | 50 cents per month |
| 2 party ..... | 35 cents per month |
| 4 party ..... | 25 cents per month |

#### SUBURBAN SERVICE.

(Minimum of four subscribers per line.)

Beyond three quarters mile and not exceeding five miles from central exchange—

10 party wall set, \$2.00; desk set, \$2.25.

Beyond five miles and within territory served by applicant—

10 party wall set, \$2.50; desk set, \$2.75.

#### FARMER LINE SERVICE.

*Switching rate*, 25 cents per month. Minimum five stations per line. Under this rate farmer line subscribers are required to furnish and maintain their own lines to the exchange limits, and to furnish and maintain their own telephone sets.

In view of the foregoing the following order is recommended:

**ORDER.**

Application having been made by The Pacific Telephone and Telegraph Company and by Louis Evans, the first to withdraw from territory in and about Graham and Tranquillity, both in Fresno County, California, and the latter to construct, operate and maintain a telephone system under lease from the Graham Farm Lands Company in the said same territory as defined in that certain proposed connecting agreement filed with this application, and a hearing having been held thereon, and the said lease between the Graham Farm Lands Company and Louis Evans having been approved by this Commission,

*It is hereby ordered* that the application of The Pacific Telephone and Telegraph Company and of Louis Evans, the one to withdraw from and the other to enter the field in and about Graham and Tranquillity as a public utility operating a telephone plant at the following rates:

| BUSINESS.             |        |               |                  |
|-----------------------|--------|---------------|------------------|
| 1 party wall set..... | \$2 50 | Desk set..... | \$2 75 per month |
| 2 party wall set..... | 2 00   | Desk set..... | 2 25 per month   |
| 4 party wall set..... | 1 75   | Desk set..... | 2 00 per month   |

| RESIDENCE.             |        |               |                  |
|------------------------|--------|---------------|------------------|
| 1 party wall set.....  | \$2 00 | Desk set..... | \$2 25 per month |
| 2 party wall set.....  | 1 75   | Desk set..... | 2 00 per month   |
| 4 party wall set.....  | 1 50   | Desk set..... | 1 75 per month   |
| 10 party wall set..... | 1 00   | Desk set..... | 1 25 per month   |

*Exchange radius* one half ( $\frac{1}{2}$ ) mile from the central exchange or switchboard in the town of Graham.

*Mileage charges beyond the exchange radius:*

For each one quarter ( $\frac{1}{4}$ ) mile or fraction, in addition to above rates

|               |                    |
|---------------|--------------------|
| 1 party ..... | 50 cents per month |
| 2 party ..... | 85 cents per month |
| 4 party ..... | 25 cents per month |

*Suburban service*, minimum of four subscribers per line.

Beyond three quarters mile and not exceeding five miles from central exchange—

|                        |        |               |                  |
|------------------------|--------|---------------|------------------|
| 10 party wall set..... | \$2 00 | Desk set..... | \$2 25 per month |
|------------------------|--------|---------------|------------------|

Beyond 5 miles from central exchange and within territory served by Louis Evans—

|                        |        |               |                  |
|------------------------|--------|---------------|------------------|
| 10 party wall set..... | \$2 50 | Desk set..... | \$2 75 per month |
|------------------------|--------|---------------|------------------|

*Farmer line*, switching rate 25 cents per month, minimum five stations per line.

Under this rate Farmer line subscribers are required to furnish and maintain their own lines to the exchange limits, and to furnish and maintain their own telephone sets.

*Toll rates.*—For calls between points without the territory served by Louis Evans and points on his lines—10 cents for two (2) minutes or fraction thereof and 5 cents for each additional minute or fraction in excess of two minutes, be and the same is hereby granted; provided, that the proposed connecting agreement herein referred to be so modified as to provide for the payment by The Pacific Telephone and Telegraph Company to Louis Evans of 30 per cent on originating tolls or the equivalent thereof divided between originating and incoming tolls; and provided, further, that this permission is not to be taken as an

approval of the rates by this Commission, since the Commission has not as yet passed upon their ultimate reasonableness, this order to be and become effective on the filing with the Commission of a revised connecting agreement on the part of the two companies involved, and a revised rate schedule on the part of the company proposing to operate in accordance with this order, these filings to be made not later than thirty days from date of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1913.

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DECISION No. 751.

STONE CANYON COAL COMPANY

*vs.*

SOUTHERN PACIFIC COMPANY.

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Case No. 360.

*Decided June 26, 1913.*

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Complaint of Stone Canyon Coal Company alleges rate on coal between McKay and San Francisco on line of Southern Pacific Company is excessive.

*Held*, Rate of \$1.90 per ton excessive, defendant ordered to file, within twenty days, tariff containing rate of \$1.50 per ton between McKay and San Francisco.

*Seth Mann*, for Complainant.

*George D. Squires*, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

The complainant, a corporation, engaged in mining coal at Stone Canyon, Monterey County, in its petition filed March 26, 1913, attacks as unjust, unreasonable and excessive the rate of \$1.90 per ton on coal, in carloads, from McKay to San Francisco; and also all other rates on coal carried in Southern Pacific Company local freight tariff No. 442, C. R. C. No. 64; and further alleges that any rate for the transportation of coal from McKay to San Francisco higher than \$1.00 per ton is unjust, unreasonable and excessive.

Complainant is the owner of a coal mine located in Monterey County at Stone Canyon, which is about 22 miles from McKay, a station on the line of the Southern Pacific Company 199.6 miles south of San Francisco.

Witness for complainant testified that the mine was first opened for commercial purposes in 1908; was worked for about one year with indifferent success and then sold to the Stone Canyon Consolidated Coal Company. The new company did some development work but their operations were not profitable and the property, after passing through a receivership, reverted to the original owner in 1911. Experts who have examined the property, estimate that the mine contains from fifty to one hundred million tons of coal. Chemical analysis demonstrates that the coal has great heat value. It compares favorably with coals reaching San Francisco by vessel from the north, such as Wellington and Seattle, and can be used for steam and domestic purposes. The coal is not of good appearance; is somewhat smoky and sooty, and therefore does not sell for as high a price as other coals of equal heat units with which it comes into market competition.

Complainant states that during the month of February, 1913, it shipped 1,495 tons of coal and made large consignments in March, same averaging 73,335 pounds per car, and that shipments could be increased to 7,500 tons per month. It is also pointed out by complainant that the coal is weighed and way-billed at the mine; that there is no agency at the junction point of McKay, and, therefore, the Southern Pacific Company has no initial terminal expense in connection with these shipments.

Defendant testified that the rate from McKay to San Francisco was originally \$2.00 per ton; was reduced to \$1.90, and admitted that a lower rate would be satisfactory if there were a continuous and heavy tonnage.

I have given due consideration to the testimony and the many exhibits submitted in this proceeding. The following comparative table taken from the exhibits and from defendant's tariffs is illustrative of the rates in effect for the transportation of commodities of greater and less value than coal:

Exhibit of Earnings, Per Ton Per Mile and Per Ton Per Car Mile, in Case No. 360.

| From—         | To—               | Miles. | Commodity                     | Mini-<br>mum<br>weight,<br>pounds | Rate<br>per ton | Earnings |                       |
|---------------|-------------------|--------|-------------------------------|-----------------------------------|-----------------|----------|-----------------------|
|               |                   |        |                               |                                   |                 | Per car  | Cents per<br>car mile |
| Friant        | Oakland           | 213    | Boulders, crushed rock        | 60,000                            | \$1 05          | \$31 50  | .493                  |
| Richmond      | Tulare            | 233    | Boulders, crushed rock        | 60,000                            | 1 15            | 34 50    | .489                  |
| Weed          | San Francisco     | 323    | Box refuse, mill blocks, etc. | 24,000                            | 2 25            | 27 00    | .696                  |
| Gypsite       | Redlands          | 193    | Crude gypsum and land plaster | 50,000                            | 1 50            | 37 50    | .777                  |
| Friant        | Oakland           | 213    | Gravel and sand               | 60,000                            | 1 05            | 31 50    | .492                  |
| Stockton      | Betteravia        | 310    | Gravel and sand               | 60,000                            | 1 55            | 46 50    | .500                  |
| Nystic        | San Francisco     | 225    | Ice                           | 30,000                            | 1 75            | 26 25    | .777                  |
| Hilt          | Bakersfield       | 585    | Mill blocks and refuse        | 30,000                            | 4 00            | 60 00    | .683                  |
| Coalinga      | Los Angeles       | 298    | Oil, crude                    |                                   | 2 30            |          | .771                  |
| McKittrick    | Chico             | 415    | Oil, crude                    |                                   | 3 05            |          | .734                  |
| McKittrick    | Pitt              | 509    | Oil, crude                    |                                   | 3 80            |          | .766                  |
| Alta          | Redwood           | 182    | Ore, quartz rock, value \$10  | 30,000                            | 1 25            | 18 75    | .686                  |
| Weed          | San Francisco     | 323    | Sawdust                       | 20,000                            | 2 25            | 22 50    | .696                  |
| Honeut        | Alvarado          | 152    | Sugar beets                   | 60,000                            | 1 00            | 30 00    | .638                  |
| San Lucas     | Crockett          | 188    | Sugar beets                   | 60,000                            | 1 20            | 36 00    | .638                  |
| Tehama        | Alvarado          | 202    | Sugar beets                   | 60,000                            | 1 20            | 36 00    | .594                  |
| Anahelm       | Lano              | 207    | Sugar beet pulp, not dried    | 60,000                            | 1 20            | 36 00    | .579                  |
| Anahelm       | Imperial Junction | 214    | Sugar beet pulp, not dried    | 60,000                            | 1 30            | 39 00    | .608                  |
| Hilt          | San Jose          | 412    | Wood fuel, not cord           | 24,000                            | 2 50            | 30 00    | .607                  |
| Hilt          | Turlock           | 398    | Wood slab and mill blocks     | 30,000                            | 2 60            | 39 00    | .654                  |
| Bakersfield   | San Francisco     | 301.5  | Oil, crude                    |                                   | 2 30            |          | .763                  |
| Placerville   | San Francisco     | 148.7  | Rock, quartz, value \$10      | 30,000                            | 1 00            | 15 00    | .672                  |
| Congress Jct. | Willows           | 221.5  | Boulders, crushed rock, etc.  | 60,000                            | 1 00            | 30 00    | .451                  |
| Niles         | Alcalde           | 232.7  | Boulders, crushed rock, etc.  | 60,000                            | 1 15            | 34 50    | .494                  |
| Niles         | Floriston         | 240.9  | Sand and gravel               | 60,000                            | 1 20            | 36 00    | .498                  |

This exhibit, with the facts presented at the hearings, convinces me that the existing rate of \$1.90 per ton on coal from McKay to San Francisco is excessive, for the reason that the coal from Stone Canyon mine is low grade; will move in large quantities in cars loaded to their capacity; it can not be damaged by the elements, and will suffer but little, if any, loss in transit.

I am of the opinion that a rate of \$1.50 per ton, with a minimum of 60,000 pounds from McKay to San Francisco is just and reasonable. This rate for the distance of 199.6 miles, will produce 7.5 mills per ton per mile and .225 cents per car mile which is a greater revenue per car mile than is secured for the transportation of any of the commodities given in the exhibit shown above.

The complaint relates also to other destinations as to which I shall enter no order, but shall expect defendant to readjust its rates in conformity with the reductions here required to San Francisco.

I recommend the following order:

**ORDER.**

Complaint having been made that the rate on coal, in carloads, from McKay to San Francisco is unjust, unreasonable and excessive, and a regular hearing having been held and the Commission being fully apprised in the premises and basing its conclusions on findings set out in the opinion and finding as a fact that a rate of \$1.50 per ton is a reasonable rate for the transportation of coal in carloads from McKay to San Francisco, such rate of \$1.50 per ton is hereby established as the lawful rate to be charged by defendant.

*It is hereby ordered* that the Southern Pacific Company publish and file with the Commission within twenty (20) days from the date of service upon it of this order, tariff containing rate of \$1.50 per ton for the transportation of coal, carloads, minimum weight 60,000 pounds, from McKay to San Francisco.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of June, 1913.



Decisions Nos. 752 and 753, grade crossings; not printed. See end of volume.

DECISION No. 754.

D. E. BROWN ET AL.

*vs.*

CONSOLIDATED CANAL COMPANY.

Case No. 390.

*Decided June 27, 1913.*

Complainants allege that the defendant company has failed to furnish them their pro rata of water for irrigation. The defendant company set up that there is a scarcity of water, due to unusually dry years, and also that farmers living higher up on the canal than the complainant have diverted more than the share of water to which they are ratably entitled.

The Commission finds that the defendant's ditch was running practically at its full capacity, and also that the defendant had taken no steps to prevent inequitable diversion by the farmers higher up on the canal.

The Commission also finds that there was an entire lack of system in the operation of defendant's business, and recommends that the defendant take formal steps to remedy the lack of system.

*Held*, That the defendant company proceed to make up the existing deficiency in the water so far supplied to the complainants and other users along the ditch by delivering to such persons their just proportion of the water to which they are entitled for the season. Case held open for further investigation in the matter of establishing rules and regulations for the future distribution of water.

*J. L. C. Irwin*, for Plaintiffs.

*H. P. Brown and Short & Sutherland*, for Defendants.

REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an action by water users against a public utility water company, based partly on an alleged failure to deliver water. The plaintiffs are landowners in township 16 south, range 22 east, township 16 south, range 23 east and township 17 south, range 22 east, Mount Diablo base and meridian, in Fresno, Tulare and Kings counties. Nearly all the complainants reside on what is known as the East Island, in township 17 south, range 22 east, Mount Diablo base and meridian. The plaintiffs allege that the defendant has failed to deliver water to them under certain contracts which are annexed to and made a part of the complaint. These contracts are the contract dated December 15, 1900, between the Centerville and Kingsburg Irrigation Ditch Company and the Fresno Canal and Irrigation Company, the contract dated June 18, 1902, between Centerville and Kingsburg Ditch Company and The Fresno Canal and Irrigation Company and the Consolidated Canal Company, and the deed dated October 11, 1902, between the Fresno Canal and Irrigation Company, the California Safe Deposit and Trust Company, L. A. Nares, Charles Laton and Laguna Lands, Limited.

The plaintiffs allege that the waters in the defendant company's ditches are not ratably distributed by the company, and that the users of water near the source or head of the ditch are permitted to use such quantities as they desire without regard to whether or not the users of water at the lower end of the ditch are given their pro rata of the water. The contract between the Centerville and Kingsburg Irrigation Ditch Company and the Fresno Canal and Irrigation Company, dated December 15, 1900, specifies certain lands to which the Centerville and Kingsburg Ditch Company agrees to deliver water at not to exceed two cubic feet of water per second for each quarter section of land, including all the lands owned by the plaintiffs, and then provides that said Centerville and Kingsburg Irrigation Ditch Company may sell a total of 300 water rights of two cubic feet each, and that "if at any time the aggregate quantity of water in the canals or ditches of said corporation shall be less than or fall short of 600 cubic feet per second flowing, then each contract or water right of this issue, tenor and effect shall represent the proportionate part of said aggregate quantity and the party of the second part shall be entitled to receive water in that proportion."

The answer denies the material allegations of the complaint and alleges that defendant has fully performed its contracts. The answer also alleges that the defendant has tried to induce the plaintiffs to organize for the purpose of co-operating with the defendant in the distribution of the water and that the plaintiffs have not complied with the suggestion.

The testimony shows that the plaintiffs are served by the Centerville and Kingsburg ditch, which is one of the ditches of the defendant company. The defendant secures its water from a dam located in section 35, township 13 south, range 23 east, Mount Diablo base and meridian, and constructed across the Kings River. The same dam serves also to divert the water which flows through the Fresno canal belonging to the Fresno Canal and Irrigation Company. A little over a mile below the point of diversion the waters flowing through the Centerville and Kingsburg ditch are divided, part of them being diverted to what is known as the Fowler Switch canal and the remaining waters continuing down the Centerville and Kingsburg canal. The defendant claims the right to take 1,500 second feet of water from the Kings River when there is water there for its use. There is no claim in this case that the defendant has failed to take the waters which it could take. The plaintiffs base their case mainly on the proposition that the amount of water which is actually diverted from the Kings River by the defendant company is not fairly or ratably distributed, with the result that they have not secured their fair proportion of the water. The plaintiffs are supposed to receive water from what is

known as the Cole Slough ditch, this being one of the laterals of the Centerville and Kingsburg canal. The Cole Slough ditch, according to the defendant, is entitled to one third of the water which the defendant company diverts from the Kings River.

The testimony shows that prior to the first day of the hearing, on June 24, 1913, the plaintiffs had received only a partial irrigation, this having been had in the early part of May. Some of the plaintiffs had received no water at all. The others were able to irrigate a portion of their lands, but in no case the entire land. On June 24th water again appeared on the island, but on the last day of the hearing, which was June 26, 1913, the company had diverted all the water flowing through its canal into the Fowler Switch canal. The plaintiffs contended that the cause for their failure to receive additional water was the action of the defendant in permitting consumers of water living higher up on the ditch to take about as much water as they desired, even though such water was considerably in excess of the amount to which these people were ratably entitled. The evidence sustains this position of the plaintiffs. It shows that higher up on the canal the farmers have been permitted to use considerably more water than that which has been distributed to plaintiffs.

The defendant admitted that the plaintiffs had not received the amount of water to which they are ratably entitled, but relied on two main defenses, one being the scarcity of water and the other the unauthorized diversion of water by farmers living higher up on the canal. With reference to the first point, the testimony shows that 1912 and 1913 have been unusually dry years. Nevertheless, the defendant's ditch at the point of diversion from the Kings River, has been running practically to full capacity, so that the ditch has been taking all the water to which it was entitled, notwithstanding the diminished flow of the Kings River during this year and the preceding year. The defendant insists that its canal is large enough during a normal year to supply all the water which defendant has contracted to sell, but contends that by reason of the dryness of the present year, a larger amount of water than usual is lost by seepage, so that it has been difficult to furnish water to the farmers at the lower end of the canal. Entirely irrespective of the truth of this contention, the fact remains, that the plaintiffs have not received their ratable distribution of water. It is undoubtedly true that the increased seepage of this year has made it more difficult to supply to the farmers along the canal the amount of water which they need, but this is no excuse for the failure to distribute ratably such water as there is.

With reference to the people higher up on the canal, it appears clearly that they have been taking more than their ratable proportion of the water. It also appears that the defendant has permitted these

people to take practically all the water they desired, without any sustained effort on the part of the defendant to confine these persons to the water to which they were entitled. The testimony shows that while the Fresno Canal and Irrigation Company has instituted several prosecutions within the last few years against persons who are alleged to have tampered with the gates and taken more water than they were entitled to, it also appears that the defendant in this case has never instituted any such prosecutions. While it is undoubtedly difficult to secure a conviction in a case of this kind if a public utility corporation is the complainant, it also appears that the defendant has made very little or no effort at all to procure a ratable distribution of water. The testimony shows that the defendant has failed in its contract obligation to distribute the water ratably.

The defendant's engineer, Mr. I. Tielman, testified that the only way to remedy this situation is to place locks on the gates, and to permit the company employees alone to open and close the locks. It appears that there are some 280 head gates on the Centerville and Kingsburg ditch south of the Fowler Switch. Mr. Tielman testified that if locks were placed on the head gates and on the check gates, it will be necessary to rebuild the same and that it will cost \$15 for each small gate and \$20 for each check gate, and these estimates are liberal. He testified also that defendant would have to employ three additional ditch tenders at a salary of \$70 to \$75 per month, and one assistant engineer to divide the water, at a salary of \$125 per month. He testified that he had installed a system of locks on a canal of the Fresno Canal and Irrigation Company west from Fresno, in order to stop the stealing of water on that canal, and that the system is working satisfactorily. The plaintiffs also contended that the only permanent solution of the difficulty is a system of locks. It is evident that such system can not be installed during the present irrigating season, which will last only a few weeks longer. The Commission will not at the present time order the defendant to install locks, but will leave this matter for consideration in connection with the framing of rules and regulations as to which reference will hereafter be made in this opinion and in the order.

The plaintiffs claimed that the defendant is selling water rights in excess of the capacity of its system, and that this fact is partly responsible for the shortage of water this year. The defendant submitted a summary of water right locations of the Consolidated Canal Company, which summary shows that during the year 1910, 19 22/32 feet of water were located by the defendant; in the year 1911, 4 32/100 second feet; and in the years 1912 and 1913, 4 23/32 cubic feet, thus making a total of 28½ second feet, which were located on 4,560 acres of land. During the same year, 4¾ second feet located on 700 acres, were canceled, leaving a net additional amount of water located in the years 1910 to 1913,

inclusive, on the defendant's entire system of  $24\frac{1}{2}$  second feet located on 3,860 acres. Of the land so located not more than three second feet have been located on the Centerville and Kingsburg canal since January 1, 1910. The defendant claims the right to sell 600 second feet and its officers testified that of this amount it had located  $514\frac{1}{32}$  second feet. While it appears that a relatively small acreage has been located within the last three or four years, there is a serious question as to whether any additional water rights should be sold by reason of the apparent inability of the defendant to supply the water needed to irrigate the lands of the persons who now have water rights. I shall not go into this question in this case for the reason that it is not directly involved therein, and that the subject will be gone into fully in other cases now pending before the Commission.

The testimony shows a marked lack of system in the conduct of the defendant's business. The defendant does not seem to have any definite rules and regulations. There is no accurate measurement and record of the amount of water which is distributed to individual consumers, nor of the amount of water which is distributed to the various laterals. Records should be kept in such a manner that an inspection will show promptly the amount of water which is going to each lateral and to the individual consumers day by day. Some of the employees also evidently do not understand their duty. The evidence shows a certain ditch tender who knew very little indeed concerning what was going on on his part of the beat. Apparently he had not been properly instructed by the defendant, either with reference to observing closely what is going on on his beat or reporting to the defendant such complaints as might have been made to him. The plaintiffs also apparently did not understand what to do in order to bring their grievances to the attention of the defendant. The employees should be more carefully instructed in their duties and provision made so that the wants of the water users can be properly attended to in so far as possible and that they may know what to do in order to bring their grievances to the attention of the defendant.

It appeared also, incidentally, that the defendant had brought suit against certain of its water users for failure to pay the water rental of 75 cents per acre, and that in some of these cases suit was brought notwithstanding the fact that no water at all had been delivered to the landowner. It appeared further that such suits had been brought in cases in which the defendant had clearly failed in its duty to ratably distribute the water. While this is a matter over which this Commission does not have jurisdiction, I feel that the defendant's attention should be drawn to the injustice of suing the landowners to recover rent in cases in which the defendant itself has failed in its duty to distribute to the water users their just proportion of the water.

It is clear that the welfare of large portions of the San Joaquin Valley is dependent upon a just and equitable distribution of the available water. In this matter the public utility and the public must act in harmony if the best results are to be secured. I have no doubt that the drought of the last two years has subjected the defendant company to unexpected difficulties and I realize fully the impossibility of giving every one a full head of water during a season such as the present one. At the same time this condition furnishes no excuse for a failure to distribute ratably such water as the defendant has under its control. While the defendant has in a way been unprepared to meet the exigencies of the last two years, I trust that the defendant will now take prompt steps to remedy the situation. The Commission will endeavor to assist both the public utility and the public to work out a more satisfactory condition and will direct its hydraulic department to consult both with the plaintiffs and with the defendant in the preparation of rules and regulations which shall govern the distribution of water during ensuing seasons. By reason of the fact that the present irrigating season has almost expired, all the Commission can do for this season is to give the temporary relief indicated in the order.

I submit herewith the following form of order:

**ORDER.**

A public hearing having been held in the above entitled matter, and the matter having been submitted and the Commission being fully advised in the premises, .

*It is hereby ordered* that the Consolidated Canal Company be and the same is hereby directed to make up the existing deficiency in water hitherto supplied to the plaintiffs and other users of water from Cole Slough ditch by delivering to such persons forthwith their just proportion of this year's water in said Consolidated Canal Company's system, and to continue such delivery until such persons have received their ratable proportion of this year's water, or a sufficient quantity to irrigate their lands once in addition to such water as may have been delivered in the month of May, or until the available supply from the Kings River becomes insufficient.

This case shall be held open for such further order as the Commission may after further investigation hereafter make in establishing rules and regulations for the future distribution of said Consolidated Canal Company's waters or in other respects.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of June, 1913.

## DECISION No. 755.

IN THE MATTER OF THE APPLICATION OF MOUNT JACKSON  
WATER AND POWER COMPANY FOR AUTHORITY TO  
INCREASE DOMESTIC WATER RATES.

Application No. 566.

*Decided June 27, 1913.*

Application of Mount Jackson Water and Power Company to increase water rates from \$5.00 to \$15.00 per annum.

*Held*, Applicant permitted to increase minimum flat rate from \$5.00 to \$6.00 per year.

*A. F. Lemberger*, for Applicant.

*S. K. Dougherty*, for Rionido Land and Improvement Company.

## REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

Mount Jackson Water and Power Company is engaged in the business of selling water, chiefly for domestic use, in and about Rionido, Sonoma County. This company has been selling water to consumers at a flat rate of \$5.00 per annum. This rate was the outgrowth of an agreement under which land was sold at Rionido with the understanding that water would be sold to lot purchasers at \$5.00 per annum. The applicant maintains a special rate of \$180 per year for water sold to the Northwestern Pacific Railroad Company.

Applicant now asks for authority to put into effect a flat rate to all consumers occupying residences, of \$15 per year; a flat rate of \$180 per year to the Northwestern Pacific Railroad Company; a flat rate of \$75 per year to the Rionido Hotel, and a rate of 20 cents per thousand gallons for water for street sprinkling.

The applicant states that it has been operating at a loss. It submits an appraisal of its properties in the sum of \$13,148.82; an investment cost of these properties to its stockholders of \$5,535.15; a statement of outstanding notes in the sum of \$7,613.68.

The conditions under which the applicant herein operates are peculiar in that the permanent population resident at Rionido comprises only fifteen water users, in addition to the hotel and railroad company. Rionido is a summer resort, and it appears that a number of persons maintain summer cottages, which they visit chiefly during the months of June, July and August. The number of persons, who reside at Rionido during the summer season only averages approximately 93 in June, 132 in July and 110 in August. There are also transient residents during the other months of the year.

In considering this application, I desire to call attention to the unfortunate circumstance, which has been commented upon in other decisions of this Commission, which always arises when land companies in an

endeavor to sell their property contract to deliver water at an unreasonably low figure. Sometimes this is done in ignorance of what a proper rate for water service should be, but frequently it is held out as a bait to help the sale of the land. The practice of holding out a promise of an unreasonably low water rate as an inducement to prospective purchasers to buy land has been strongly condemned by this Commission, and I can only here add my hearty endorsement of those criticisms which have heretofore been made of this practice.

It is clear that Mount Jackson Water and Power Company can not continue to sell water at the flat \$5.00 rate and still live. This rate will lead inevitably to bankruptcy. It is only in the face of this fact and the further fact that a transient population of considerable size has invested in property at Rionido and that the cessation of or serious impairment of the water service would largely destroy the value of these investments that I recommend that applicant be relieved from the \$5.00 rate. This rate was established originally to further the sale of the land and under ordinary circumstances in which it could be accomplished the applicant herein should be required to continue to give water service at the promised rate. However, the service must be maintained and it certainly can not be long maintained at the \$5.00 rate. Whatever I may think of this practice of using a promise of this kind to sell land and then repudiating this promise, I feel, nevertheless, under the particular circumstances in this case, that the necessity must be recognized of increasing the rates to maintain the service.

The applicant has submitted a statement of its necessary operating expenses and has added thereto an allowance for taxes and depreciation and a proper return upon its investment. It estimates that it requires for this purpose a gross total revenue of \$2,317.02. Among these items it includes \$383.68 as a sinking fund to retire its indebtedness. Obviously, this is an item which can not be recognized as an operating expense. The elimination of this item would leave a balance of \$1,934.02.

I am not able to accept the valuation which the company places upon its property, as I find therein a sum of \$1,000 for going concern value and other items which might be properly reduced. With such allowance as I believe should be made, I find that the applicant herein should be able to pay all its operating expenses, maintenance, taxes, depreciation and obtain a fair return upon its investment if rates are so fixed as to yield a gross revenue per annum of \$1,760.80.

In reaching a conclusion as to rates, I am mindful of the fact that many persons have purchased land at Rionido in the belief that they could obtain water at a flat rate of \$5.00 per year. The Commission is required, however, to fix just and reasonable rates, and as has been held in previous cases, no agreements or contracts as between individ-



uals can supersede or displace the rate-making power of the State. At the same time, I believe that in view of these promises of a low rate, the Commission, while allowing the applicant herein a fair return upon the value of its property, should not make the rate any higher than the necessities require.

I shall, therefore, recommend a schedule of rates calculated to yield, as above stated, the gross revenue of \$1,760.80.

The service is not metered and for that reason it is not possible to establish a definite standard of measurement. I am unwilling to recommend that meters be installed, for the reason that the transient character of such a large proportion of the water users does not warrant the expenditure. In the absence of meters a minimum flat rate must be necessarily arbitrary as to amount, but I believe a satisfactory and equitable basis may be obtained by requiring all consumers to pay the minimum and to assume that the average monthly usage would be in excess of such minimum.

The applicant herein has stated that it proposes to expend a sum approximating \$1,850 in improvements in its system and in further developing its supply. What has heretofore been said in this opinion and the rates which are set out in the order herein assume the expenditure of at least \$1,650 for the improvement and development noted.

I recommend the following form of order:

#### ORDER.

Mount Jackson Water and Power Company having filed with this Commission an application to establish rates for water furnished its customers and consumers, and a hearing having been held and the Commission being fully informed in the premises,

*It is hereby found as a fact* that the following rates are reasonable, and Mount Jackson Water and Power Company is hereby given authority to charge such rates to its consumers:

|  |                 |
|--|-----------------|
| For every dwelling house a minimum flat rate of-----   | \$6 00 per year |
| And in addition thereto when water is used for domestic purposes, the following monthly charges: |                 |
| January -----  | \$0 25          |
| February -----   | 25              |
| March -----  | 25              |
| April -----  | 25              |
| May -----  | 25              |
| June -----   | 1 25            |
| July -----   | 1 25            |
| August -----   | 1 25            |
| September -----  | 25              |
| October -----  | 25              |
| November -----   | 25              |
| December -----   | 25              |
| To the Northwestern Pacific Railroad Company not to exceed                                       |                 |
| 15,000 gallons of water per day of twenty-four hours-----  | 200 00 per year |
| To the Rionido Hotel -----   | 86 00           |
| For street sprinkling, per 1,000 gallons-----  | 20              |

*It is further ordered* that these rates shall become effective on July 1, 1913.

*It is hereby further ordered* that Mount Jackson Water and Power Company establish forthwith and file with this Commission rules for collection under these rates.

*It is hereby further ordered* that Mount Jackson Water and Power Company shall not be required to install meters.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 27th day of June, 1913.

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Decision No. 756 not used.

DECISION No. 757.

IN THE MATTER OF THE APPLICATION OF W. L. CHILDERS  
FOR AN ORDER AUTHORIZING HIM TO LEASE THE  
CRESCENT CITY WATER WORKS AND GIVE AN OPTION  
THEREIN TO PURCHASE TO JAMES H. OWEN, AND BY  
THE LATTER TO ASSIGN THE SAME TO THE MOUNTAIN  
POWER COMPANY.

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Application No. 277.

*Decided June 30, 1913.*

Application of W. L. Childers for permission to lease the Crescent City Water Works to the Mountain Power Company.

*Held*, Application granted, value not to be used for rate-fixing purposes.

*Robert C. Porter*, for Mountain Power Company.

*James H. Owen*, in *propria persona*.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner*.

This is an application by Mountain Power Company and W. L. Childers for an order authorizing the execution of a lease, with option to purchase, whereby a water distributing plant in Crescent City, Del Norte County, California, now owned by W. L. Childers, is to be leased to Mountain Power Company.

The lease provides for a payment by the Mountain Power Company to said Childers of \$50 per month, with an option running to the power company to purchase the entire plant for \$7,500, said monthly payments of \$50 to be credited on the purchase price if the option is exercised.

The agreement is to run for one year from its date with the privilege of a one-year extension.

It appears that the Mountain Power Company has established and is now operating a water distributing system in Crescent City, and the testimony on behalf of said corporation is that the plant owned by Mr. Childers is of no use to said power company, and if leased and purchased that it will not be used. The power company desires to enter into this agreement because it may avoid difficulty with regard to a franchise now held by the power company, as it is expected to operate under the franchise now held by Childers.

Furthermore, the power company insists that it wishes to be fair with Childers and is willing to pay the \$50 a month, and if it exercises the option, the \$7,500, rather than put him out of business through competition and destroy the value of his plant.

The power company is willing to write off the monthly payments, and if it exercises the option, the purchase price of this plant if this agreement is approved. It is apparent that the power company is in a position to, and undoubtedly will, give the citizens of Crescent City a far better water service than is possible to be given by Mr. Childers as his plant is inadequate and antiquated and he has not the resources with which to rehabilitate it.

Clearly the consumers should not be burdened with the cost, or any part of the cost, of a useless plant, but inasmuch as the company is willing to make this investment upon the understanding that no part thereof shall be charged against consumers, I see no reason why it should not be granted, provided the order contains a provision protecting the consumers against any charge made because of this lease or purchase.

I recommend that the application be granted and submit herewith the following form of order:

**ORDER.**

Application having been made to the Railroad Commission of the State of California by W. L. Childers and the Mountain Power Company asking for authorization for W. L. Childers to lease to the Mountain Power Company, with an option to purchase, all of the water producing and distributing system located in Crescent City, Del Norte County, California, now belonging to said W. L. Childers, and a hearing having been had, and it appearing to the Commission that public interest and convenience will be served by granting said application,

*It is hereby ordered* by the Railroad Commission of the State of California that W. L. Childers and Mountain Power Company are hereby authorized to execute an agreement of lease, and option to purchase, that certain water distributing system, together with franchise, more

particularly described in a copy of the proposed lease and option on file with the application herein and marked "Exhibit 1," in Crescent City, Del Norte County, California, now owned by said W. L. Childers, said agreement and option to be in substantially the same form as said "Exhibit 1."

Provided, that as a condition to the granting of this order, none of the moneys paid by the Mountain Power Company for the acquisition or lease of the property above described shall be added to the plant or capital account of said Mountain Power Company. Nor shall such sum or any part thereof be used or considered in fixing rates to be paid by consumers.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1913.

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Decision No. 758, grade crossing; not printed. See end of volume.

DECISION NO. 759.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF RIGHTS AND PRIVILEGES GRANTED TO IT BY ORDINANCE NO. 129 OF THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA.

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Application No. 557.

*Decided June 30, 1913.*

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REPORT OF THE COMMISSION.

Great Western Power Company having applied to this Commission for a certificate that public convenience and necessity require the exercise of the rights and privileges granted applicant by the board of supervisors of Contra Costa County, State of California, in its ordinance No. 129, adopted June 9, 1913, by which ordinance applicant is given the right to construct and maintain an electrical distribution system along certain highways in said county, and it appearing that the Pacific Gas and Electric Company and also the Sierra and San Francisco Power Company are each already serving a portion of the territory covered by this franchise, and the Commission being of the

opinion that as to the territory involved in this application and not being served by the Pacific Gas and Electric Company, or the Sierra and San Francisco Power Company, this application should be granted, and that there is no necessity for a hearing in case the application is granted only as to the territory not served by either of said companies.

*It is hereby ordered* that public convenience and necessity require the exercise by Great Western Power Company of the rights and privileges granted to said company by the board of supervisors of Contra Costa County, State of California, in Ordinance No. 129; provided, however, that this certificate of public convenience and necessity is granted only to that portion of Contra Costa County, California, which is not now served by Pacific Gas and Electric Company from the following described lines of said company:

1. Beginning at the easterly boundary of the town of Antioch, running thence east along the northerly line of sections 19 and 20 to a point at or near the northeast corner of the northwest quarter of section 20, all in T. 2 N., R. 2 E., M. D. B. and M., a distance of  $1\frac{1}{2}$  miles, a little more or less.

2. Beginning at the southerly limits of the town of Antioch, running thence south along the westerly line of section 19, T. 2 N., R. 2 E., M. D. B. and M., to the southwest corner of the northwest quarter of said section 19; running thence due east a distance of 4 miles to the northeast corner of the southeast quarter of section 22, T. 2 N., R. 2 E., M. D. B. and M.; thence south  $\frac{1}{2}$  mile to the southeast corner of said section 22; thence east 1 mile to the northeast corner of section 26, T. 2 N., R. 2 E.; thence south a distance of  $\frac{1}{2}$  mile, a little more or less, to a point at or near the quarter section corner common to sections 26 and 25, T. 2 N., R. 2 E.; thence east a distance of 2 miles to a point at or near the quarter section corner common to sections 30 and 29, T. 2 N., R. 3 E., M. D. B. and M.

3. Beginning at a point at or near the northeast corner of section 30, T. 2 N., R. 3 E., running thence south a distance of 2 miles to the northeast corner of section 6, T. 1 N., R. 3 E.; thence east 2 miles to the northeast corner of section 4, T. 1 N., R. 3 E.; thence south  $1\frac{1}{2}$  mile, a little more or less, to a point at or near the southeast corner of the northeast quarter of section 9, T. 1 N., R. 3 E.

4. Beginning at the northwest corner of section 32; running thence east to a point at or near the northeast corner of section 33; running thence north 1 mile to a point at or near the northeast corner of section 28; thence in a northwesterly direction a distance of  $\frac{1}{2}$  mile, a little more or less, to a point at or near the center of section 21, all in T. 2 N., R. 3 E.;

and which is not now served by the Sierra and San Francisco Power Company, or which may be served from the lines of the Sierra and San Francisco Power Company now actually in course of construction.

By order of the Railroad Commission.

Dated at San Francisco, California, this 30th day of June, 1913.

Decision No. 760, grade crossing; not printed. See end of volume.

DECISION No. 761.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF BONDS OF THE FACE VALUE OF SIX HUNDRED AND THIRTY-NINE THOUSAND DOLLARS.

Application No. 590.

*Decided June 30, 1913.*

Application of San Diego Consolidated Gas and Electric Company for permission to issue bonds in the sum of \$639,000 at 5 per cent, proceeds to be used; \$459,000 for construction and extensions and \$180,000 to refund company for capital expenditures. *Held*, application granted, subject to certain conditions.

*Frederic W. Stearns*, for Applicant.

REPORT OF THE COMMISSION.

*THELEN, Commissioner.*

This is an application on the part of the San Diego Consolidated Gas and Electric Company for authority to issue bonds of the face value of \$180,000 to reimburse the company for capital expenditures heretofore made, and bonds of the face value of \$459,000 for the construction, completion and extension of its facilities, as will hereinafter appear in greater detail.

Applicant supplies the city of San Diego and surrounding territory as far south as Tia Juana, as far east as Foster and as far north as Del Mar with gas and electricity and is the only company in the field. For general statements concerning this company's financial condition see this Commission's decisions on Application No. 192 (Decision No. 210), Application No. 344 (Decision No. 491), and Application No. 378 (Decision No. 453).

Applicant alleges that between November 30, 1912, and April 30, 1913, it expended in the construction, extension and improvement of its facilities the sum of \$346,124.05. Under the provisions of Article III of its trust deed or mortgage to Harris Trust and Savings Bank and Los Angeles Trust Company (now known as Los Angeles Trust and Savings Bank) applicant is under the obligation of depositing with said Harris Trust and Savings Bank on the first day of June of each of the years 1910 to 1914, inclusive, in a depreciation and renewal fund, a sum equal to 3 per cent of its bonds outstanding on the first day of October next preceding the making of each such deposit. This money may thereafter be expended for permanent improvements. On June 1, 1913, applicant deposited with said trustee under said pro-

vision, the sum of \$102,750 against which bonds can not issue. Under said deed of trust petitioner is not entitled to issue bonds in excess of 75 per cent of said sum of \$346,124.05, after deducting therefrom said sum of \$102,750. The total amount of bonds which petitioner desires to issue on account of said expenditures heretofore made is accordingly 75 per cent of the sum of \$243,374.05, being bonds of the face value of \$180,000. The expenditures which have heretofore been made by applicant between November 30, 1912, and April 30, 1913, and against which applicant desires authority to issue said bonds of the face value of \$180,000, will be set forth in greater detail in the order in this proceeding.

Under date of January 29, 1909, the Harris Trust and Savings Bank was granted an option to purchase such bonds as the applicant might thereafter issue at certain prices ranging from 91 and interest to 95 and interest. Enough bonds have now been issued so that if the Harris Trust and Savings Bank exercises its option it would be required to pay for these bonds 95 and interest. It appears, however, due to the uncertain condition of the financial market, that the Harris Trust and Savings Bank will probably not exercise its option and that applicant will either be under the necessity of selling all the bonds elsewhere or of pledging them. Applicant states that it hopes to be able either to sell the bonds for between 85 and 90 or to pledge them as collateral security for money borrowed on terms of not to exceed \$1.00 of bonds for 85 cents of money borrowed. Applicant asked leave at the hearing to amend its application so as to petition for authority to pledge these bonds, if necessary, on said terms, which permission was granted.

I find that the money to be procured from the proceeds of said issue of bonds is reasonably required to reimburse applicant for moneys which it has heretofore expended on capital account and that the purposes for which the money is to be spent are not in whole or in part reasonably chargeable to operating expenses or to income.

Referring now to that portion of the application which affects the issue of bonds of the face value of \$459,000, applicant submits a statement of estimated expenditures for construction, completion, extension and improvement of facilities from May 1, 1913, to December 1, 1913, which statement is attached to the application and marked "Schedule No. 4." It appeared at the hearing that this statement is in certain respects erroneous. Applicant accordingly asked for and was granted permission to file a revised estimate, which has now been filed and which is marked "Schedule Number Four. Revised June 21, 1913." This revised estimate may be substituted for schedule number four attached to the application. The revised estimate shows the expenditures which applicant estimates will be necessary to be made from May 1, 1913, to

December 1, 1913, in the territory served by applicant. The list of expenditures will be set forth in the order. It appears that the business of applicant is growing tremendously. For the year 1912, applicant increased its consumers of electric energy over the year 1911 by 4,401 consumers, or 45 per cent. During the same period it increased its consumers of gas by a percentage at least as large. Applicant estimates an increase of 30 per cent in its customers, both for electricity and gas, for the year 1913. The population of San Diego and vicinity is increasing very rapidly and applicant's resources are taxed to keep up with the growth.

Applicant estimates that the sum of \$612,487.09 will be necessary for capital expenditures between May 1st and December 31st, 1913, and asks for authority to issue bonds against 75 per cent of this sum, amounting to \$459,000, par value, of bonds.

I find that the money to be procured from the issue of said bonds will reasonably be required for the capital expenditures of applicant during said period and that the purposes specified by applicant are not in whole or in part reasonably chargeable to operating expenses or to income. Applicant may hereafter from time to time submit a statement showing expenditures which it has made for capital purposes under the provisions of the order herein, together with the amount of bonds which it is desired to issue thereon, not to exceed 75 per cent thereof, and a statement of the terms at which applicant believes that it can dispose of said bonds. The Commission will thereupon from time to time issue such supplemental orders as it may believe to be wise in the premises.

As applicant could give no intimation of the price which it might expect to secure from the sale of said \$459,000, par value, of bonds, this information shall be furnished by applicant from time to time as applicant asks for the authorization of bonds covered by this application, and no sale price for these bonds will be specified in the order.

The Commission has heretofore in several of its decisions questioned the charge of  $7\frac{1}{2}$  per cent for engineering credited to H. M. Byllesby & Company, the owners of the property, on all construction work, whether demanding the services of Chicago engineers or not, and the Commission herewith repeats its doubts concerning this item but deems it unnecessary to reach a final conclusion therein at the present time, for the reason that this is not a rate-fixing inquiry and that sufficient margin still exists between the value of the property and the amount of bonds outstanding, so as to make a determination at this time unnecessary.

Applicant's rates for electricity are 10 cents per kilowatt hour for lighting, 10 cents to 3 cents per kilowatt hour for commercial purposes



and 8 cents to 1½ cents per kilowatt hour for power, with discounts of 10 per cent for prompt payment. Its rate for gas throughout its entire territory is \$1.10 per 1,000 cubic feet, less a discount of 10 per cent for prompt payment. Upon applicant's attention being drawn to these rates at the hearing, applicant stated that it now had under consideration a revision of said rates, but did not desire to be placed in the position at the present time of making any promises in connection therewith.

Applicant's profit and loss statement for the year ending December 31, 1912, is as follows:

|  |              |                |
|--|--------------|----------------|
| Gross earnings -----                           |              | \$1,019,470 84 |
| Operating expenses -----                       |              | 507,703 83     |
| Net earnings -----                             |              | \$511,767 01   |
| Bond interest -----                            | \$159,002 82 |                |
| General interest -----                         | 6,136 78     |                |
| Depreciation -----                             | 84,000 00    |                |
| Bond discount -----                            | 10,170 00    |                |
| Reorganization -----                           | 3,000 00     |                |
|  |              | 262,309 60     |
|  |              | \$249,457 41   |
| Preferred stock dividends -----                | \$28,690 40  |                |
| Common stock dividends -----                   | 159,635 00   |                |
|  |              | 188,325 40     |
| Surplus for year ending December 31, 1912----- |              | \$61,132 01    |

I recommend that the application be granted and submit the following form of order:

**ORDER.**

San Diego Consolidated Gas and Electric Company having applied to the Railroad Commission for the consent of the Commission to the issuance by said company of bonds of the face value of \$639,000, said bonds to be payable on the 1st day of March, 1939, and to bear interest at the rate of five (5%) per cent per annum, payable semiannually, and secured by a trust deed or mortgage upon all the property of the company, and a public hearing having been held upon said application, and the Commission finding that the moneys to be procured by the issue of said bonds are necessary to and reasonably required by said company for the acquisition of property, the construction, completion, extension and improvement of its facilities and the discharge and refunding of its obligations, and that said purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

*It is hereby ordered* that the Railroad Commission of the State of California hereby authorizes the issue by San Diego Consolidated Gas and Electric Company of six hundred and thirty-nine thousand dollars (\$639,000), face value, of principal of bonds of said company, bearing

numbers 3630 to 4268, inclusive, maturing the first day of March, 1939, redeemable on March 1, 1914, or on any interest date thereafter, at par, accrued interest and a premium of five (5%) per cent on the principal thereof, and to bear interest at five (5%) per cent per annum, payable semiannually, under and in pursuance of the terms of the trust deed or mortgage heretofore and on the first day of March, 1909, made and executed by said San Diego Consolidated Gas and Electric Company to Harris Trust and Savings Bank and Los Angeles Trust Company, now known as Los Angeles Trust and Savings Bank, as trustees, upon the conditions following and not otherwise, to wit:

1. As to bonds of the face value of one hundred and eighty thousand (\$180,000) dollars of the issue hereby authorized, being bonds numbers 3630 to 3809, inclusive, San Diego Consolidated Gas and Electric Company shall sell said bonds so as to net said company not less than eighty-five (85%) per cent of the par value of the principal, besides interest accrued thereon, or, as an alternative to the sale thereof, said San Diego Consolidated Gas and Electric Company shall have the right to pledge said bonds as security for the purposes hereinafter specified, on the basis that not in excess of one (\$1.00) dollar, face value, of bonds shall be pledged to secure a loan of eighty-five (85¢) cents.

(a) The proceeds from the sale or pledge of said bonds of the face value of one hundred and eighty thousand (\$180,000) dollars shall be applied only to the following purpose, that is to say, for the discharge and lawful refunding of obligations of the company heretofore incurred for the acquisition of property and the construction, completion, extension and improvement of its facilities in the total sum of three hundred forty-six thousand one hundred twenty-four and 5/100 (\$346,124.05) dollars, as appears from Schedule No. 3 annexed to the application in this proceeding, and showing construction expenditures from November 30, 1912, to January 1, 1913, and from January 1, 1913, to April 30, 1913.

2. As to bonds of the face value of four hundred and fifty-nine thousand (\$459,000) dollars of said issue, being bonds numbers 3810 to 4268, inclusive, San Diego Consolidated Gas and Electric Company is directed to file with this Commission from time to time whenever it may desire to issue a portion of said bonds, verified statements showing the amount of money which has been expended by said company subsequent to April 30, 1913, for the acquisition of property, the construction, completion, extension or improvement of its facilities, the improvement or maintenance of its service or the discharge or lawful refunding of its obligations for permanent construction work of the character specified in Revised Schedule No. 4, attached to said application, a

summary of the expenditures designated in said revised schedule being as follows:

|   |              |
|---|--------------|
| (1) Steam power plant equipment-----            | \$64,500 00  |
| (2) Electric distribution system -----          | 164,344 39   |
| (3) Gas plant, building and structures-----     | 10,989 00    |
| (4) Gas generators, balance-----                | 29,940 24    |
| (5) Purification appliances -----               | 22,667 79    |
| (6) Water gas sets and accessories-----         | 7,000 00     |
| (7) Accessory equipment at works-----           | 35,513 48    |
| (8) Gas distribution -----                      | 170,235 40   |
| (9) Gas services -----                          | 58,085 60    |
| (10) Gas meters -----                           | 21,821 61    |
| (11) Miscellaneous distribution equipment ----- | 10,273 26    |
| (12) General office equipment -----             | 828 83       |
| (13) General shop equipment -----               | 4,917 12     |
| (14) Contingencies -----                        | 11,420 37    |
|   | <hr/>        |
|   | \$612,487 09 |

Upon the presentation of such verified statements, together with the price at which applicant expects to be able to sell said bonds, the Commission will from time to time make supplemental orders authorizing the issue of bonds of a face value not to exceed seventy-five (75%) per cent of the moneys properly expended by applicant for such capital expenditures and designating the minimum price at which said bonds may be sold.

(a) The proceeds from the sale of said bonds shall be applied only to the purposes to be specified in said supplemental orders, which purposes shall be confined to the purposes designated in said Revised Schedule No. 4.

3. San Diego Consolidated Gas and Electric Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make a verified report to the Commission, stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

4. San Diego Consolidated Gas and Electric Company shall file with this Commission certified copies of the statements or certificates to be filed by it with the trustees under its said trust deed, on which statements or certificates it expects to receive from the trustees the bonds hereby authorized to be issued.

5. This order shall not become effective until the fee specified in section 57 of the Public Utilities Act has been paid.

6. The authority hereby given to issue bonds shall apply only to bonds issued by said company on or before the thirtieth day of June, 1914.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of June, 1913.

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DECISION No. 762.

IN THE MATTER OF THE APPLICATION OF THE SAN DIEGO  
AND SOUTH EASTERN RAILWAY COMPANY FOR AN  
ORDER AUTHORIZING BOND ISSUE IN THE SUM OF  
FIVE HUNDRED THOUSAND DOLLARS.

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Application No. 440.

*Decided June 30, 1913.*

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REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

San Diego and South Eastern Railway Company having on June 23, 1913, made written request to this commission that the above entitled application be dismissed,

*It is hereby ordered* that the above entitled application be and the same hereby is dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 30th day of June, 1913.

## DECISION No. 763.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR AN ORDER AUTHORIZING IT TO INCREASE RATES ON DRIED FRUIT, INCLUDING RAISINS, PRUNES AND FIGS, AS SHOWN IN SANTA FE SYSTEM TARIFF NO. 8169, C.R.C. 89.

Application No. 599.

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IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR AN ORDER AUTHORIZING IT TO INCREASE RATES ON DRIED FRUIT, INCLUDING RAISINS, PRUNES AND FIGS, BY CANCELLING ITEM NO. 1 AND CERTAIN SPECIFIED RATES SHOWN IN LOCAL FREIGHT TARIFF NO. 121-B, C.R.C. 1528.

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Application No. 600.

*Decided June 30, 1913.*

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## REPORT OF THE COMMISSION.

## ORDER OF DISMISSAL.

The Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company having on June 28, 1913, made written request to this Commission that the above entitled applications be dismissed,

*It is hereby ordered* that the above entitled applications be and the same are hereby dismissed without prejudice.

By order of the Railroad Commission.

Dated at San Francisco, California, this 30th day of June, 1913.

## GRADE CROSSING.

| Dec. No. | App. No. | Applicant.                  | Location.        | Action.    | Date.         |
|----------|----------|-----------------------------|------------------|------------|---------------|
| 397      | 346      | Southern Pacific Co.        | Mojave           | Granted    | Jan. 8, 1913  |
| 398      | 348      | A. T. & S. F. Ry.           | Huntington Park  | Granted    | Jan. 8, 1913  |
| 399      | 345      | Southern Pacific Co.        | Fresno           | Granted    | Jan. 8, 1913  |
| 408      | 354      | Southern Pacific Co.        | Berkeley         | Granted    | Jan. 15, 1913 |
| 409      | 355      | Southern Pacific Co.        | Pasadena         | Granted    | Jan. 15, 1913 |
| 410      | 356      | Southern Pacific Co.        | Irvington        | Granted    | Jan. 15, 1913 |
| 415      | 360      | Southern Pacific Co.        | Banning          | Granted    | Jan. 20, 1913 |
| 416      | 361      | Southern Pacific Co.        | Rowan            | Granted    | Jan. 20, 1913 |
| 417      | 364      | Southern Pacific Co.        | San Francisco    | Granted    | Jan. 20, 1913 |
| 429      | 384      | A. T. & S. F. Ry. Co.       | Schmidt          | Granted    | Jan. 30, 1913 |
| 432      | 270      | Tulare County               | Kingsburg        | Granted    | Feb. 3, 1913  |
| 433      | 386      | Southern Pacific Co.        | Fresno           | Granted    | Feb. 3, 1913  |
| 444      | 388      | Pacific Electric Ry.        | Pasadena         | Granted    | Feb. 6, 1913  |
| 448      | 395      | Southern Pacific Co.        | Corning          | Granted    | Feb. 7, 1913  |
| 449      | 396      | Kern County                 | Kern Junction    | Granted    | Feb. 7, 1913  |
| 452      | 367      | Los Angeles County          | Los Angeles Co.  | Granted    | Feb. 11, 1913 |
| 465      | 405      | Southern Pacific Co.        | King City        | Granted    | Feb. 18, 1913 |
| 466      | 406      | Sac. & Woodland Ry. Co.     | Woodland         | Granted    | Feb. 18, 1913 |
| 471      | 411      | Southern Pacific Co.        | Berkeley         | Granted    | Feb. 20, 1913 |
| 472      | 412      | Southern Pacific Co.        | Amadee           | Granted    | Feb. 20, 1913 |
| 474      | 413      | Southern Pacific Co.        | Gilroy           | Granted    | Feb. 20, 1913 |
| 479      | 414      | Southern Pacific Co.        | Avon             | Granted    | Feb. 24, 1913 |
| 481      | 420      | Los Angeles County          | Los Angeles Co.  | Granted    | Mar. 1, 1913  |
| 482      | 424      | A. T. & S. F. Ry. Co.       | Antioch          | Granted    | Mar. 1, 1913  |
| 483      | 425      | Oakland & Antioch Ry.       | Sacramento       | Granted    | Mar. 1, 1913  |
| 485      | 390      | Cuyamaca Sand & Gravel Co.  | Foster           | Dismissed  | Mar. 1, 1913  |
| 487      | 410      | San Ramon Valley Ry.        | Contra Costa Co. | Granted    | Mar. 4, 1913  |
| 488      | 427      | Oak., Antioch & Eastern Ry. | Sacramento       | Granted    | Mar. 4, 1913  |
| 492      | 416      | S. D. & Southeastern Ry.    | Foster           | Granted    | Mar. 10, 1913 |
| 493      | 433      | Los Angeles County          | Savoy            | Granted    | Mar. 11, 1913 |
| 500      | 442      | Madera County               | Chowchilla       | Granted    | Mar. 14, 1913 |
| 501      | 443      | A. T. & S. F. Ry. Co.       | San Diego        | Granted    | Mar. 15, 1913 |
| 502      | 444      | Southern Pacific Co.        | Bestos           | Granted    | Mar. 15, 1913 |
| 503      | 445      | Southern Pacific Co.        | Flint            | Granted    | Mar. 15, 1913 |
| 509      | 139      | Central Pacific Co.         | Oakland          | Granted    | Mar. 20, 1913 |
| 510      | 450      | Southern Pacific Co.        | Fresno           | Granted    | Mar. 20, 1913 |
| 511      | 442      | Madera County               | Madera County    | Granted    | Mar. 20, 1913 |
| 513      | 73       | Pacific Electric Ry.        | Raymer           | Dismissed  | Mar. 20, 1913 |
| 516      | 451      | Southern Pacific Co.        | Fresno           | Granted    | Mar. 21, 1913 |
| 517      | 451      | Southern Pacific Co.        | Oakland          | Granted    | Mar. 24, 1913 |
| 518      | 397      | Town of Fowler              | Fowler           | Granted    | Mar. 24, 1913 |
| 522      | 463      | Southern Pacific Co.        | Caruthers        | Granted    | Mar. 26, 1913 |
| 523      | 464      | Southern Pacific Co.        | Santa Rosa       | Granted    | Mar. 26, 1913 |
| 524      | 465      | Southern Pacific Co.        | Davis            | Granted    | Mar. 26, 1913 |
| 525      | 466      | City of El Centro           | El Centro        | Granted    | Mar. 26, 1913 |
| 528      | 108      | Merced County               | Volta            | Granted    | Mar. 28, 1913 |
| 529      | 293      | Merced County               | Livingston       | Granted    | Mar. 28, 1913 |
| 530      | 431      | Kings County                | Hanford          | Granted    | Mar. 28, 1913 |
| 531      | 467      | Kern County                 | Bakersfield      | Granted    | Mar. 28, 1913 |
| 532      | 468      | Tidewater Southern Ry.      | Modesto          | Granted    | Mar. 28, 1913 |
| 540      | 427      | Oak. Antioch & Eastern Ry.  | Sacramento       | Amd. order | Apr. 1, 1913  |
| 547      | 476      | San Fran.-Oak. Term. Rys.   | Richmond         | Granted    | Apr. 4, 1913  |
| 548      | 473      | Southern Pacific Co.        | Roche            | Granted    | Apr. 4, 1913  |
| 553      | 480      | Tidewater Southern Ry.      | Escalon          | Granted    | Apr. 7, 1913  |
| 554      | 481      | Tidewater Southern Ry.      | Modesto          | Granted    | Apr. 7, 1913  |
| 555      | 483      | Southern Pacific Co.        | San Jose         | Granted    | Apr. 7, 1913  |
| 563      | 490      | San Fran.-Oak. Term. Rys.   | Oakland          | Granted    | Apr. 10, 1913 |
| 564      | 492      | Southern Pacific Co.        | San Francisco    | Granted    | Apr. 10, 1913 |

## Grade Crossing—Continued.

| Dec. No. | App. No.  | Applicant.                  | Location.       | Action.   | Date.         |
|----------|-----------|-----------------------------|-----------------|-----------|---------------|
| 565      | 493       | Southern Pacific Co.        | San Francisco   | Granted   | Apr. 10, 1913 |
| 583      | 511       | Petaluma & Santa Rosa       | Sonoma County   | Granted   | Apr. 18, 1913 |
| 585      | 496       | Stockton Term. & East'n Ry. | Stockton        | Granted   | Apr. 18, 1913 |
| 586      | 503       | Pacific Electric Ry.        | Rialto          | Granted   | Apr. 18, 1913 |
| 587      | 504       | Pacific Electric Ry.        | San Bernardino  | Granted   | Apr. 18, 1913 |
| 588      | 505       | Pacific Electric Ry.        | San Bernardino  | Granted   | Apr. 18, 1913 |
| 589      | 506       | Pacific Electric Ry.        | San Bernardino  | Granted   | Apr. 18, 1913 |
| 590      | 507       | Pacific Electric Ry.        | San Bernardino  | Granted   | Apr. 18, 1913 |
| 591      | 508       | Pacific Electric Ry.        | Upland          | Granted   | Apr. 18, 1913 |
| 592      | 509       | Southern Pacific Co.        | San Francisco   | Granted   | Apr. 18, 1913 |
| 593      | 510       | San Mateo County            | San Carlos      | Granted   | Apr. 18, 1913 |
| 594      | 499       | Fresno County               | Luvita          | Granted   | Apr. 19, 1913 |
| 598      | 517       | San Fran.-Oak. Term. Rys.   | Oakland         | Granted   | Apr. 24, 1913 |
| 611      | 518       | San Fran.-Oak. Term. Rys.   | Oakland         | Granted   | Apr. 28, 1913 |
| 612      | 522       | A. T. & S. F. Ry. Co.       | Los Angeles     | Granted   | Apr. 28, 1913 |
| 620      | 495       | Pacific Electric Ry.        | Upland          | Granted   | Apr. 29, 1913 |
| 625      | 527       | Southern Pacific Co.        | Thalheim        | Granted   | Apr. 30, 1913 |
| 626      | 528       | Southern Pacific Co.        | El Monte        | Granted   | Apr. 30, 1913 |
| 627      | 529       | Southern Pacific Co.        | Bakersfield     | Granted   | Apr. 30, 1913 |
| 632      | 533       | Southern Pacific Co.        | Studebaker      | Granted   | May 2, 1913   |
| 633      | 534       | Southern Pacific Co.        | Dos Palos       | Granted   | May 2, 1913   |
| 634      | 532       | Southern Pacific Co.        | Los Angeles     | Granted   | May 2, 1913   |
| 648      | 535       | Pacific Electric Ry.        | San Pedro       | Granted   | May 7, 1913   |
| 649      | 536       | Pacific Electric Ry.        | Bay City        | Granted   | May 7, 1913   |
| 650      | 539       | Los Angeles County          | Los Angeles Co. | Granted   | May 7, 1913   |
| 651      | 540       | Southern Pacific Co.        | Los Angeles     | Granted   | May 7, 1913   |
| 652      | 541       | Southern Pacific Co.        | King City       | Granted   | May 7, 1913   |
| 666      | 548       | A. T. & S. F. Ry. Co.       | Los Angeles     | Granted   | May 9, 1913   |
| 671      | 550       | Southern Pacific Co.        | Redwood City    | Granted   | May 15, 1913  |
| 672      | 551       | Southern Pacific Co.        | Redwood City    | Granted   | May 15, 1913  |
| 675      | 555       | Visalia Electric Ry.        | Redbanks        | Granted   | May 19, 1913  |
| 677      | 562       | Pacific Electric Ry.        | Brea            | Granted   | May 20, 1913  |
| 678      | 544       | Southern Pacific Co.        | Vernon          | Granted   | May 20, 1913  |
| 679      | 564       | Riverside County            | Cabazon         | Granted   | May 20, 1913  |
| 687      | 560       | Northern Electric Ry.       | Solano County   | Granted   | May 24, 1913  |
| 688      | 561       | Northern Electric Ry.       | Vallejo         | Granted   | May 24, 1913  |
| 689      | 567       | Southern Pacific Co.        | McPherson       | Granted   | May 24, 1913  |
| 690      | 573       | State of California         | Bicknell        | Granted   | May 24, 1913  |
| 695      | 571       | Pacific Electric Ry.        | Los Angeles     | Granted   | May 27, 1913  |
| 696      | 575       | Northern Electric Ry.       | Sacramento      | Granted   | May 27, 1913  |
| 699      | 553       | Northern Electric Ry.       | Stockton        | Granted   | May 28, 1913  |
| 701      | 583       | A. T. & S. F. Ry.           | Stockton        | Granted   | June 4, 1913  |
| 703      | 580       | Pacific Electric Ry.        | Orange County   | Granted   | June 5, 1913  |
| 711      | 589       | Los Angeles County          | Los Angeles     | Granted   | June 11, 1913 |
| 712      | 581       | Pacific G. & E. Co.         | Solano County   | Granted   | June 11, 1913 |
| 728      | 497       | Stockton Term. & East'n Ry. | Stockton        | Dismissed | June 20, 1913 |
| 729      | 592       | Southern Pacific Co.        | Los Angeles     | Granted   | June 20, 1913 |
| 730      | 613       | A. T. & S. F. Ry. Co.       | Dinuba          | Granted   | June 20, 1913 |
| 731      | Not used. |                             |                 |           |               |
| 743      | 598       | Pacific Electric Ry.        | Orange          | Granted   | June 25, 1913 |
| 744      | 615       | Southern Pacific Co.        | Dinuba          | Granted   | June 25, 1913 |
| 745      | 617       | Pacific Electric Ry.        | Santa Monica    | Granted   | June 25, 1913 |
| 746      | 620       | Redondo Beach               | Redondo Beach   | Granted   | June 25, 1913 |
| 752      | 389       | Pacific Electric Ry.        | Pasadena        | Granted   | June 26, 1913 |
| 753      | 387       | Pacific Electric Ry.        | Pasadena        | Granted   | June 26, 1913 |
| 756      | Not used. |                             |                 |           |               |
| 758      | 625       | Southern Pacific Co.        | Berkeley        | Granted   | June 30, 1913 |
| 760      | 578       | Sonoma County               | Sonoma County   | Granted   | June 30, 1913 |

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